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COMPENDIUM

OF

PRECEDENTS IN CONVEYANCING

SECOND EDITION.

BY

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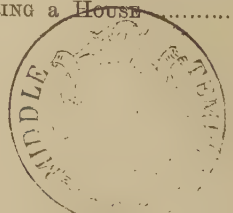

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AGREEMENTS.

PRELIMINARY NOTE.

By sect. 40 of the Law of Property Act, 1925, no action can be brought upon any agreement that is not to be performed within one year from the making thereof unless such agreement, or some memorandum thereof, be in writing, signed by the party to be charged therewith or some other person thereunto by him lawfully authorised. Some of the following precedents are of agreements to be performed within one year, others are for a more extended period, but they are all such as are usually under hand and signed by the contracting parties or their agents. As to what agreements are within sect. 40 of the Law of Property Act, 1925, cf. also *Britain* v. *Rossiter,* L. R. 11 Q. B. D. 123; *Maddison* v. *Alderson,* 8 App. Cas. 467; *Hanau* v. *Ehrlich,* [1912] A. C. 39; *Smith* v. *Gold Coast, &c., Ltd.,* [1903] 1 K. B. 285, 538; *Reeve* v. *Jennings,* [1910] 2 K. B. 522; and *Lavalette* v. *Riches & Co.,* 24 L. T. R. 336, discussed 52 Sol. J. 276.

The Schedule to the Stamp Act, 1891, contains the following provisions as to the stamping of agreements other than agreements mentioned under the headings of "Mortgage," "Lease on Tack," "Conveyance on Sale":—

	£	*s.*	*d.*
Agreement or Contract made or entered into pursuant to the Highway Acts for or relating to the making, maintaining, or repairing of highways	0	0	6

	£	s.	d.
AGREEMENT or any MEMORANDUM of an AGREEMENT, made in England or Ireland under hand only, or made in Scotland without any clause of registration, and not otherwise specifically charged with any duty, whether the same be only evidence of a contract, or obligatory upon the parties from its being a written instrument	0	0	6

Exemptions.

(1) Agreement or memorandum the matter whereof is not of the value of 5*l*.

(2) Agreement or memorandum for the hire of any labourer, artificer, manufacturer, or menial servant.

(3) Agreement, letter, or memorandum made for or relating to the sale of any goods, wares, or merchandise.

(4) Agreement or memorandum made between the master and mariners of any ship or vessel for wages on any voyage coastwise from port to port in the United Kingdom.

(5) Agreement entered into between a landlord and tenant pursuant to sub-section six of section eight or sub-section two of section twenty of the Land Law (Ireland) Act, 1881.

See, too, sects. 22 and 23 of the Act.

By sect. 7 of the Finance Act, 1907, it is provided that the exemption numbered (3) shall not apply to hire-purchase agreements.

As to agreements under seal see Sched. to the Stamp Act, 1891, under heading "Bond, Covenant, &c."

PRECEDENTS.

I. AGREEMENT *with a* BUILDER *to* PULL DOWN *existing* HOUSE, *&c., and* RE-BUILD, *where an* ARCHITECT *is employed* (*a*).

I. TO PULL DOWN AND REBUILD A HOUSE, &c.

AN AGREEMENT, made the —— day of ——, 19—, BETWEEN [*builder*], of, &c. (hereinafter called "the builder"), of the one part; and [*owner*], of, &c. (hereinafter called "the owner"), of the other part. WHEREBY IT IS AGREED as follows:—

Parties.

1. Licence is hereby granted to the builder to enter upon the piece of ground hereinafter described for the purpose only of performing this contract.

Licence to enter.

2. The builder shall at his own cost pull down and remove the house and buildings now standing upon a piece of ground belonging to the owner, and situate and being No. ——, in —— Street, in the parish of ——, in the county of ——, and erect, build, and completely cover in and finish upon the said piece of ground, in a good, substantial, and workmanlike manner, and with the best materials, a house and other buildings according to the plans and specifications which have been signed by the builder and by [*architect*], the architect of the owner, under the direction and to the satisfaction in every respect of the said [*architect*] or other the architect for the time being of the owner (hereinafter referred to as the architect).

Builder to pull down and remove existing buildings and to erect new buildings according to plans, &c.

3. The builder shall forthwith commence the said works and uninterruptedly carry on the same until completion, and the said

Completion.

(*a*) A contract for building a house is not a contract relating to land or for the sale of goods within the L. P. A. 1925, s. 40, and unless it is not to be performed within the year may be by parol, and if made in writing may be subsequently varied by parol. If under hand only, it will require a 6*d.* stamp. For various statutory amendments of the Stamp Act, 1891, see Alpe on Stamp Duties, 17th ed.

The form of building contract adopted by the R. I. B. A. can be purchased at the Institute. The form of an agreement with an architect for his services is given in vol. 1 of "The Conveyancer," Form 81, p. 96; the forms of the architect's certificates of work done, and of the architect's notice to the builder on failure to perform his contract, are given on pp. 97, 98, of the same volume.

I. TO PULL DOWN AND REBUILD A HOUSE, &C.

works shall be completed, and the said house and buildings finished and covered in and made fit for habitation and use, within —— calendar months from the date of this agreement. [Provided that in the event of any delay arising from fire or tempest or other inevitable cause of what kind soever or from any strike or lock-out (*b*) in the building trade or any other trade connected therewith, or by reason of the owner failing to pay to the builder any money due to him under clause 6 hereof, then such further time shall be allowed for the completion of the said works as the architect shall certify in writing to be reasonable.]

Further time allowance in certain events.

Materials to be provided by builder (*c*).

4. The builder shall supply all materials to be used in the works, whether mentioned in the specification or not, save as otherwise provided by the specification and save as may be otherwise required in writing by the owner or the architect.

Clearance after completion.

5. The builder shall within —— days after the completion of the works remove all scaffolding, fencing, implements, materials, and rubbish, and leave the house, buildings, and works in a clean and proper condition.

Payment (*d*).

6. The owner shall pay to the builder the sum of £—— in manner following, that is to say:—the sum of £—— upon production to the owner of the architect's certificate in writing (*e*) that work to the value of £—— has been duly executed to his satisfaction; the further sum of £—— upon production of the like certificate that work to the value of £—— has been so exe-

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(*b*) As to the meaning of "strike," see *Farrer* v. *Close*, L. R. 4 Q. B. at p. 612; *Stephens* v. *Harris*, 57 L. J. Q. B. 203; of "lock-out," see *Re Richardson and Samuel*, [1898] 1 Q. B. 261. It is important to use words which will exclude the application of the doctrine of *ejusdem generis:* see *Re Richardson and Samuel* (*ibid.*); *Knutsford* v. *Tillmans & Co.*, [1908] A. C. 406; 77 L. J. K. B. 977. As to delay caused by interference of a third party, see *Porter* v. *Tottenham U. D. C.*, [1915] 1 K. B. 776.

(*c*) A person who contracts to build a house impliedly undertakes to provide all necessary materials: *Williams* v. *FitzMaurice*, 3 H. & N. 844.

(*d*) As to payment by the employer being made conditional on his approval of the work done, see *Dallmann* v. *King*, 4 Bing. N. C. 105; *Parsons* v. *Sexton*, 4 C. B. 899; *Hughes* v. *Lenny*, 5 M. & W. 193.

(*e*) The contract should require the architect's certificates to be in writing: see *Roberts* v. *Watkins*, 14 C. B. N. S. 592. As to the effect of conditions requiring certificates, see *Sharpe* v. *San Paulo Rail. Co.*, L. R. 8 Ch. 597; *Dobson* v. *Hudson*, 1 C. B. N. S. 659.

I. TO PULL DOWN AND REBUILD A HOUSE, &C.

cuted; and the balance of the said sum of £—— upon production of the like certificate that the said works have been completed and the said house and buildings covered in and made fit for habitation in accordance with this agreement and to the architect's satisfaction [*or*, "in sums amounting to ninety per cent. on the value of the works for the time being executed, and not being less than £—— at each payment, such percentage to be ascertained by the architect, and to be paid upon production to the owner of his certificate in writing that the work has been done to his satisfaction, and the balance of the said sum of £——, &c." *as before*].

Certificate to be withheld in certain events.

7. The architect's certificate shall not be given in respect of any work which is defective or not in accordance with the contract, or while the builder is not using due diligence in executing the works or is making default in the due performance of this agreement.

Alterations and deviations (*f*).

8. All alterations in or deviations from the said original specification and plans which may be ordered in writing by the owner, whether by way of addition or omission, or otherwise, shall be carried out under the direction and to the satisfaction of the architect in like manner as if the same had been included in the original specification and plans, and all additions to or deductions from the contract price in respect of such alterations or deviations shall be fixed by the architect. No payment or allowance shall be made to the builder for extra work done or materials used without the previous authority in writing of the owner, and the contract price shall not be altered by reason of any authorised alteration or deviation except so far as the same shall alter the amount of labour or the value of the materials required to be used in or about the works, nor shall the mode of payment of the contract price or of ascertaining the value of the work done be affected by any such alteration or deviation. And only such further time (if any) as the architect shall certify in writing to be reasonable shall be allowed in respect or by reason of any such alteration or deviation (*g*).

(*f*) See *Tharsis Sulphur and Copper Co.* v. *McElroy*, 3 App. Cas. 1040; *Richards* v. *May*, 10 Q. B. D. 400. As to builders' right to payment in the case of trifling and immaterial deviations or omissions from the contract, see *Lucas* v. *Godwin*, 3 Bing. N. S. 737; *Stannard* v. *Lee*, 3 B. & S. 364; *Dakin & Co.* v. *Lee*, [1916] 1 K. B. 566.

(*g*) This last clause is necessary to enable the owner to recover in

I. TO PULL DOWN AND REBUILD A HOUSE, &C.

Deduction or set-off (*h*).

9. The owner shall be entitled to deduct any moneys payable to him by the builder under this contract from any sum payable hereunder to the builder, and in making his certificates the architect shall have regard to any sums so payable by the builder. But this provision shall not affect any other remedy which the owner may be entitled to for the recovery of any such moneys.

Penalties for delay (*i*).

10. If the builder shall from any cause whatever fail to complete the said dwelling-house, buildings, and works, and to remove all scaffolding, fencing, unused materials, and rubbish within the respective times and in the manner aforesaid, or within such extended time as shall be allowed for that purpose, then, upon the architect certifying in writing that such default has been made, the builder shall pay to the owner as liquidated damages, and not as a penalty, the sum of £—— for every subsequent week, and so in proportion for any part of a week until such completion and removal as aforesaid shall have been duly effected, such completion and removal to be certified in writing by the architect.

Materials to belong to the owner (*j*).

11. All materials from time to time in or about the premises for use in the said works, except such as the architect may object to as not being in accordance with the specification, shall be the property of the owner, and shall so far as required be used solely for the purposes of the said works, and shall not be removed without the written authority of the architect so long as the works are in progress, but on completion of the works any surplus materials shall be removed by the builder as hereinbefore provided.

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respect of delay where additional works are ordered: see *Dodd* v. *Churton*, [1897] 1 Q. B. 562.

(*h*) On the bankruptcy of the contractor, the Court may order a certificate to be given: see *Ex p. Gray*, 58 L. J. Q. B. 5.

(*i*) See *Law* v. *Redditch Local Board*, [1892] 1 Q. B. 127; *Gallivan* v. *Killarney U. D. C.*, [1912] 2 I. R. 356; also *Young* v. *Kitchin*, 3 Ex. D. 127; and *Newfoundland Govt.* v. *Newfoundland Ry. Co.*, 13 A. C. 199.

(*j*) The effect of this clause is to vest the property in the materials when bought on the land in the owner, subject to the condition for the removal of surplus materials on the completion of the works: *Hart* v. *Porthgain Harbour Co., Ltd.*, [1903] 1 Ch. 690. The clause, having no reference to bankruptcy, is valid as against creditors: *In re Waugh*, 4 Ch. D. 524; *Ex p. Jay*, 14 Ch. D. 19; *Keen* v. *Keen*, [1902] 1 K. B. 555. See further, as to the validity of this clause, K. & E. Prec. 11th ed.

I. TO PULL DOWN AND REBUILD A HOUSE, &C.

12. The builder shall personally superintend the carrying out of the works, and no part of the work shall be assigned or underlet without the express consent in writing of the owner (*k*). In case of unnecessary delay by the builder in proceeding with the works, such delay being certified in writing by the architect, and if the owner or the architect shall have given to the builder, or left at his then or last-known place of abode or business, notice in writing to proceed with the works, and the builder shall not so proceed within —— days after such notice shall have been so given or left, or in case the architect shall have certified in writing that any work or materials are defective, and the builder shall fail to remove any such works or materials within ten days after notice in writing by the owner or architect requiring him so to do shall have been given to him or left at the works or at his last-known place of abode or business, or in case the builder shall assign or sub-let this contract without such consent as aforesaid, then, and in any such case, the owner shall be at liberty without avoiding this contract to take possession of the premises and to retain and use all or any materials and implements thereon, including all scaffolding, plant, and tools, and employ any person or persons to execute the said works, either wholly or partially, without being liable for any loss of materials or injury done to them during the execution of the works, and all expenses and damages thereby incurred shall be paid by the builder to the owner upon the architect ascertaining and certifying in writing the amount thereof.

Contract not to be assigned.

Power for the owner in case of delay or bad work, &c. to carry out works at the builder's expense.

13. The architect's certificate or decision in writing as to any matter in respect of which his certificate is hereby required shall be binding on both parties [except as to the sufficiency of any work or materials as to which no certificate shall relieve the builder from the liability to make good any defective work or material,

Architect's certificate to be binding (*l*).

(*k*) The builder may assign moneys to become payable under the contract subject to the owner's rights. As to the effect of such assignments, see *Drew* v. *Josolyne*, 18 Q. B. D. 590.

(*l*) As to finality of the architect's certificate, see *Robins* v. *Goddard*, [1905] 1 K. B. 294; *Sharpe* v. *San Paulo Rail. Co.*, L. R. 8 Ch. 597; *Lawson* v. *Wallasey Local Board*, 52 L. J. Q. B. 302. In the absence of a clause excepting the sufficiency of work or materials (see *Ayr Board Trustees* v. *Adams*, 11 Ct. of Sessions Cas. 326) the certificate will bind the employer as well as the builder: *Goodyear* v. *Weymouth* (*Mayor*), 1 H. & R. 67; *Lapthorne* v. *St. Aubyn*, 1 C. & E. 486.

I. TO PULL DOWN AND REBUILD A HOUSE, &c.

and] except that the architect may by further certificate correct or modify any previous certificate made by him or any predecessor in office.

Builder to conform to statutory or local regulations.

14. The builder shall conform in all respects to the provisions and regulations of any general or local Act of Parliament, or of any local authority, which may be applicable to the said works, and shall indemnify the owner against all penalties incurred by reason of the non-observance of any such provisions or regulations and against all actions or proceedings in respect of damages caused to a highway in the carrying out of this contract (*m*).

Arbitration (*n*).

15. In case any question, dispute, or difference shall arise between the owner, or the architect on his behalf, and the builder as to the construction or effect of these presents, or as to any other matter or thing arising hereunder, or as to the rights or liabilities of the respective parties under this agreement (except as to matters hereby left to the sole decision of the architect, and as to which his certificate has not been unreasonably withheld), then every such question, dispute, or difference shall be referred to the arbitration of two persons (one to be appointed by each party to the reference) or their umpire. And this shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statutory modification or re-enactment thereof for the time being in force.

IN WITNESS whereof the said parties hereto have hereunto set their respective hands, &c.

II. AGREEMENT *to* BUILD *a* HOUSE, *&c., where no* ARCHITECT *is employed* (*o*).

Parties.

AN AGREEMENT, made the —— day of ——, 19—, BETWEEN [*builder*], of, &c. (hereinafter called "the builder"), of the one part; and [*owner*], of, &c. (hereinafter called "the owner"), of the other part; WHEREBY IT IS AGREED as follows:—

Builder to erect build-

1. The builder shall forthwith commence, and within the space

(*m*) See Locomotives Act, 1898, s. 12; *Epsom U. D. C.* v. *L. C. C.*, [1900] 2 Q. B. 751; *Egham R. D. C.* v. *Gordon*, [1902] 2 K. B. 120.

(*n*) For other form of arbitration clauses, see the three following precedents.

(*o*) See note (*a*), p. 3. Stamp, 6*d.*, if under hand only.

II. TO BUILD A HOUSE, &C.

of —— calendar months from the date of this agreement, erect, build, and completely cover in and finish upon the land of the owner, at —— [aforesaid], a dwelling-house and buildings according to the plans and specifications set forth in the schedule hereto.

Buildings according to plan.

2. All and singular the works aforesaid shall be executed, according to the said plans and specifications, within the time aforesaid, with the best materials (*p*), and in a good, workmanlike, and substantial manner, to the satisfaction of the owner in every respect.

With best materials, &c.

3. The builder shall within —— days after the completion of the works, remove all his scaffolding, fencing, implements, materials, and rubbish, and leave the works in a clean and proper condition.

Clearance after completion.

4. If the works shall not be completed, or if the said scaffolding, implements, and plant shall not be removed within the times hereinbefore respectively mentioned, then, and in either such case, for every subsequent working-day until the completion of the works or the removal of the said scaffolding, implements, and materials, as the case may be, the builder shall pay to the owner £—— as liquidated damages: and it shall be lawful for the owner to deduct any sum which may become payable to him, under or by virtue of this clause, from the money which shall be due to the builder under this agreement.

Penalties for delay.

5. The builder shall personally superintend the execution of the works, and shall not assign [or sublet] this contract or any part thereof without the consent and approval in writing of the owner.

Contract not to be assigned.

6. If the builder should from any cause whatsoever fail to complete the said dwelling-house, buildings, and works in manner or within the time aforesaid, and the owner should give or leave notice in writing of such default at the last known place of abode of him (the builder), and the builder should not proceed to complete the said buildings and works, within the space of seven days after such notice given or left as aforesaid, Then and in any such case it shall be lawful for the owner, without let or hindrance from the builder, or any person or persons employed by him, to purchase

In case of default, owner may complete and deduct cost.

(*p*) See note (*c*), p. 4.

II. TO BUILD A HOUSE, &C.

materials, And to employ workmen to complete the said dwelling-house, buildings, and works, And to deduct the costs of such materials, and all such sum and sums of money as he shall pay to such workmen, for the completion of such dwelling-house, buildings, and works out of the money which shall be due to the builder under this agreement (*q*): And if the cost of materials and the sums so paid to workmen by the owner shall exceed the amount so due to the builder, then the excess shall be paid to the owner by the builder.

Owner to pay builder at one payment (*r*).

7. The owner, subject as aforesaid, shall pay to the builder the sum of £—— within —— days (*or* months) next after the completion of the said dwelling-house and premises, to his satisfaction as aforesaid.

Additional work to be paid for.

8. If the owner should direct any more work to be done (*s*) in or about the said dwelling-house and premises than is mentioned in the schedule hereto, the owner shall pay to the builder so much money as the cost of such extra work, and the materials used therein, shall amount unto, in addition to the said sum of £——; And if it should be thought proper by the owner to diminish or omit any part of the work in the said schedule hereto, Then, and in every such case, the builder shall allow out of the said sum of £—— so much money as the work so to be diminished or omitted shall amount to, upon a reasonable valuation. No extra or additional work shall be done by the builder without the previous order in writing of the owner.

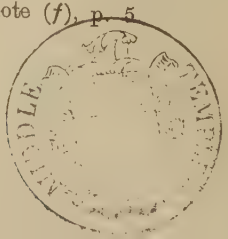
Omitted work to be deducted.

9. All work which may be rendered necessary by reason of the works hereby agreed to be executed by the builder, and also all things which may fairly be inferred from the said plans and specifications, although such works and things respectively may not have been actually specified in the same plans and specification, shall not be deemed to be additional or extra works within the meaning of this agreement, nor shall the builder be entitled to any additional payment in respect thereof.

(*q*) See *Duckworth* v. *Alison*, 1 Mee. & W. 412.

(*r*) As to the builder's right to recover a *quantum meruit* where the contract is for a lump sum and has been substantially completed with some omissions, see *Dakin & Co.* v. *Lee*, [1916] 1 K. B. 566.

(*s*) See note (*f*), p. 5.



10. If any dispute or difference should arise touching or concerning the dwelling-house, buildings, and works, hereby agreed to be erected and done as aforesaid, or touching or concerning any other matter or thing whatsoever, relating to the work hereby contracted to be done, or such additional or extra work as aforesaid, Then such dispute or difference shall be left to the determination and award of three indifferent persons, one to be named by the builder, another by the owner, and the third to be chosen by the said two persons so to be named as aforesaid, immediately or within ten days after notice of such dispute or difference; and the decision of the three persons so to be chosen, or of any two of them, shall be final. And this shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statutory modification or re-enactment thereof for the time being in force. Arbitration clause.

In witness, &c.

The Schedule above referred to.

III. BUILDING AGREEMENT *for making extensive* Alterations *of, and* Additions *to a* House *in* London.

AN AGREEMENT (*t*), made the —— day of ——, 19—, Between [*builders*], of, &c. (hereinafter called "the builders"), of the one part, and [*owner*], of, &c. (hereinafter called "the owner"), of the other part. WHEREBY IT IS AGREED as follows:—

1. The builders, in consideration of the sum of £——, to be paid to them by the owner, as hereinafter mentioned, will at their own costs and charges, execute certain works in alterations of and additions to No. 100, —— Street, W., according to the drawings numbered 1 and 2, and the specifications severally signed by them, such several works to be done under the direction and to the entire satisfaction of Messrs. —— [*architects*], of, &c., or other the architects for the time being appointed by the owner to superintend the works (hereinafter referred to as the architects), in accordance with the provisions and regulations of any general Agreement for execution of works.

(*t*) Stamp, 6*d*., if under hand only.

III. BUILDING AGREEMENT FOR ENLARGING A TOWN HOUSE.

or local Act of Parliament which may be applicable to the said works, and the requirements of the local authorities (*u*), and upon the conditions hereinafter specified.

Builders to provide proper materials, &c.

2. The builders shall at their own costs and charges provide all necessary labour, strong and secure scaffolding, moulds, and implements of every kind necessary for carrying on and completing the works, and also all materials required for the due performance of this contract, which are to be the best of their several sorts and kinds mentioned in the said specification.

Notices to local authorities.

3. The builders shall give the proper notices to and pay the fees of all public bodies and officers entitled thereto.

Defects to be made good.

4. The architects may at any time inspect the works and materials supplied for the execution of the same. If at any time during the progress of the works above mentioned, any improper or defective materials or workmanship be observed, upon notice being given in writing, the said materials shall be immediately removed from off the premises, or the said workmanship shall be immediately made good at the cost of the builders; or the architects shall be at liberty to remove or make good the same as the case may be, and deduct the expense of such removal or making good from the amount of the consideration-money hereinafter mentioned.

Alterations, &c. in works.

5. Should any alteration, variation, or omission be made in the works, the same shall not make void or invalidate this agreement, nor vary the time hereinafter fixed for completion of the works, unless an extension of time shall be allowed by an order in writing of the architects (*x*), but the value of any such alteration, variation, or omission as aforesaid, shall be estimated by the architects and be added to or deducted from the amount due under or by virtue of this agreement as the case may be. No alteration, variation, or omission is to be made, and no extra

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(*u*) It may be necessary, if any alteration of the line of frontage is proposed, to consider local or statutory provisions as to the building line, *e.g.*, under the London Building Act, 1894: see *L. C. C.* v. *Galsworthy*, [1917] 1 K. B. 35 and 902.

(*x*) A provision similar in effect to that in the text was strictly enforced in the case of *Jones* v. *St. John's College*, L. R. 6 Q. B. 115; distinguished in *Dodd* v. *Churton*, [1897] 1 Q. B. 562.

works are to be done without the previous order in writing of the owner (*y*).

Bills of quantities.

6. If any errors shall be discovered in the detailed bills of quantities, the same shall be rectified, and an addition to or deduction from the amount payable to the builders under or by virtue of this agreement shall be made accordingly; provided always, that the builders shall notify in writing to the architects the discovery of any such error within —— days from the date hereof, after which time no question as to the accuracy or otherwise of the said bills of quantities shall be entertained (*z*).

Commencement and execution of the works.

7. The works are to be commenced on or before the —— day of ——, 19—, and to be executed in a proper and substantial manner in every respect, and to be completed on or before the —— day of —— next (with the exception of new dining-room and stable building above basement level, which are to be completed on or before the —— day of ——), in default whereof the builders shall forfeit and pay to the owner the sum of 50*l.* per week as liquidated damages in each case, for every week during which the said works shall remain unfinished. Payments to be made by the owner, from time to time, as the works progress as hereinafter mentioned. The said specifications and drawings hereinbefore mentioned are to be considered as embracing all the works necessary to be done in order to finish completely the several works therein mentioned, although the details may not be clearly and specifically expressed.

Drawings and specifications.

8. Complete copies of the drawings and specifications, signed by the architects, shall be furnished by them to the builders, for their own use, and shall be kept on the premises in charge of a competent foreman, who shall be constantly at the works and shall be employed by and shall represent the builders for the purpose of receiving notices, orders, and instructions.

Contract not to be assigned, &c.

Cesser of contract in

9. No part of the work shall be assigned or underlet unless with the consent in writing of the architects. In case of unnecessary delay by the builders, or their not proceeding with the works

(*y*) It is safer to leave it to the owner, on whom the expense of any alteration or variation will fall, to decide whether or not it shall be made.

Bills of quantities.

(*z*) As to the importance of this clause and the results of depending on the accuracy of bills of quantities, see *Kemp* v. *Rose*, 1 Giff. 258; *Kimberley* v. *Dick*, L. R. 13 Eq. 1; *Scrivener* v. *Pask* (Ex. Ch.), L. R. 1 C. P. 715.

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with sufficient dispatch, the architects shall be at liberty, after —— days' notice in writing to the builders, to employ other persons to complete the works, and to take possession of all the material on the site, and to deduct the cost of completion from the sum then due under or by virtue of this agreement to the builders. The owner shall not be liable for any loss of materials, or for injury done to them during the execution of the works.

case of delay (*a*).

Payment.

10. The said sum of £—— shall, subject as hereinafter mentioned, be paid by instalments, as the works progress, as follows, that is to say: On the —— day of ——, 19—, £——; on the —— day of ——, 19—, £——; on the —— day of ——, 19—, £——; and on the —— day of ——, 19—, the balance, £——; but no payment made as aforesaid shall exceed 75 per cent. on the value of the work done up to the time of such payment, such value to be determined by the architects.

Injunction (*b*).

11. In the event of any proceedings for an injunction or otherwise being instituted and successfully maintained against the owner in respect of the said works or new buildings, or any part thereof, the owner shall only be liable to pay to the builders the actual value of the works executed and properly prepared up to the date of the successful termination of such proceedings, and the consequent stoppage of the works; [the amount so payable to be determined by the architects alone, whose decision shall be final in the matter.] The owner shall not be liable in damages or otherwise to the builders in respect of any loss or alleged loss caused to them by the stoppage of such work, nor for any materials provided by them in anticipation of such works being carried through or otherwise, except as aforesaid: Provided, nevertheless, that nothing herein contained shall affect this agreement with reference to any works or buildings which shall not be included in such proceedings, and stopped as aforesaid.

Reference to arbitration.

12. In case any question, dispute, or difference shall arise between the owner, or the architects on his behalf, and the builders, as to what additions, if any, ought in fairness to be

(*a*) This should not be extended to the case of the builder becoming bankrupt: see *Ex parte Jay*, 14 Ch. D. 19; *Ex parte Barter*, 26 Ch. D. 510.

(*b*) This is a very stringent clause, and will only be required in special cases.

III. BUILDING AGREEMENT FOR ENLARGING A TOWN HOUSE.

made to the amount of the said consideration money, by reason of the works being delayed through no fault of the builders, or by reason or on account of any directions or requisitions of the architects, involving increased cost to the builders, beyond the cost properly attending the carrying out of this contract according to the signed drawings and specifications, or as to the works having been duly completed, or as to the construction of these presents, or as to any other matter or thing arising under or out of this contract, except as to matters left during the progress of the work, to the sole decision or requisition of the architects under any clause hereof, or in case the builders shall be dissatisfied with any certificate of the architects, or in case they shall withhold or not give any certificate to which the builders may be entitled, then such question, dispute, or difference, or such certificate, or the value or matter which should be certified, as the case may be, shall be from time to time referred to the arbitration and final decision of ——, architect, or in the event of his death or unwillingness to act, then of ——, architect, and in the event of his death or unwillingness to act, then of an architect, being a Fellow of the Royal Institute of British Architects, to be appointed on the request of either party by the President for the time being of such institute, and this shall be deemed to be a submission within the Arbitration Act, 1889, or any statutory modification or re-enactment thereof for the time being in force, the provisions whereof shall so far as applicable apply. The costs of the arbitration and award shall be in the discretion of the arbitrator.

As WITNESS, &c.

IV. AGREEMENT *with a* BUILDER, *where the* TERMS *are set out in the* SPECIFICATION.

AN AGREEMENT (*c*), made the —— day of ——, 19—, BETWEEN [*builder*], of, &c. (hereinafter called "the builder"), of the one part, and [*owner*], of, &c. (hereinafter called "the owner") of the other part. Parties.

1. The builder shall execute and do the several works, the par- Builder's agreement.

(*c*) Stamp, 6*d*., if not under seal, 10*s*.

IV. AGREEMENT WITH A BUILDER.

ticulars whereof are set forth in the specification hereunto annexed and signed by the builder, and by [*architect or surveyor*], the architect [surveyor] of the owner, and the plans and drawings therein referred to, in or upon the premises therein mentioned, within the time or respective times, and in consideration of the payments to be made by the owner as therein mentioned, and shall perform, observe, and be bound by all the conditions, stipulations, and provisions therein or thereby expressed and contained, and thereby intended to be performed or observed by, and to be binding on, the builder.

Owner's agreement.

2. The owner shall, in consideration of the premises, make such payments to the builder as are mentioned in the said specification at the respective times, and in the manner therein mentioned, subject to such deductions and abatements (if any) to be made as therein expressed.

Arbitration.

3. If any dispute, difference, or question shall arise between the parties hereto, touching the construction or effect of these presents or the said specification, or any clause, matter, or thing herein or in the said specification contained, or the right or liabilities of the parties hereto respectively hereunder or otherwise in relation to the premises, then every such dispute, difference, or question shall be referred to the arbitration of two persons, one to be appointed by each party to the reference, or to an umpire to be appointed by the arbitrators in writing [before entering upon the business of the reference], and this clause shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statutory modification thereof for the time being in force.

As witness, &c.

[*Specification to be annexed.*]

V. AGREEMENT *to* EMPLOY *a* MANAGER *of a* BUSINESS *at a* SALARY *with a* PERCENTAGE *on the* NET PROFITS (*with* VARIATION *for* PERCENTAGE *on* GROSS RETURNS).

THIS AGREEMENT (*d*), made the —— day of ——, 19—, BETWEEN [*merchant*], of, &c. (hereinafter called "the employer"), of the one part, and [*manager*], of, &c. (hereinafter called "the manager"), of the other part. Parties.

1. The manager shall, during the term of —— years from the —— day of —— next (*e*), if both parties shall so long live and the employer shall continue to carry on the business of ——, whether alone or in partnership with any other person or persons, serve the employer as manager of the said business. Agreement to act as manager.

2. The manager shall give his whole time and attention to the said business, and shall use his best endeavours to improve and extend the same, and shall not during the continuance of this agreement engage or be concerned or interested in any other business (*f*). Conduct of business.

3. The manager shall diligently and faithfully obey and observe all lawful orders and instructions of the employer in relation to the said business, and shall not without his consent divulge any secrets or dealings in relation thereto (*g*). Manager to obey instructions of principal.

4. The manager shall render to the employer when required a full account of all dealings and transactions in relation to the said Manager to keep accounts.

(*d*) If not under seal, stamp, 6*d*. It would seem that a yearly salary is not an annuity or periodical payment so as to require an *ad valorem* stamp: see *Mounsey* v. *Stephenson*, 7 B. & C. 403. As to what agreements come within sect. 40 of the L. P. A. 1925, see Preliminary Note, *ante*, p. 1.

(*e*) If the manager is to receive a percentage on profits, the term should be reckoned from the commencement of a business year.

(*f*) As to the importance of inserting a positive stipulation that the manager shall not "engage" or "be concerned" ("interested" is not sufficient) in any other business, see *Whitwood Chemical Co.* v. *Hardman*, [1891] 2 Ch. 416; and *Gophir Diamond Co.* v. *Wood*, [1902] 1 Ch. 950. And see, too, *Chapman* v. *Westerby*, 58 Sol. J. 50. If the manager leaves his employment before the term expires, and enters into the services of another, the new employer is liable to an action by the former employer: see *Blake* v. *Lanyon*, 6 T. R. 221; *De Francesco* v. *Barnum*, 63 L. T. 514; *Wilkins (Fred) and Brothers* v. *Weaver*, [1915] 2 Ch. 322.

(*g*) See *Amber Size, &c. Co.* v. *Menzel*, [1913] 2 Ch. 239.

v. TO EMPLOY MANAGER, &C.

business, and shall keep at the place of business proper books of account, showing by the entries therein all moneys received or paid, and all goods bought, received, sold, or delivered out, and all particulars in relation thereto, and all other matters which may be necessary to show the state of the business.

To pay over moneys.

5. The manager shall duly account for all moneys and securities coming into his hands or power, and belonging to the employer, and shall forthwith pay or deliver the same to the employer or to his bankers for the time being to his credit, except such moneys as the manager shall, with the consent of the employer, retain for the immediate purposes of the business.

Salary, &c. of manager,

6. The employer shall during the said term, so long as the manager shall duly observe and perform the agreements on his part herein contained, pay to the manager an annual salary of £——, by equal quarterly payments on the —— day of ——, &c. [on the usual quarterly days], in each year, without any deduction, except for income tax, the first payment to be made on the —— day of —— next. [And shall also pay to the manager, at the end of each year of the said term, a further sum equal to [ten] per cent. on the net profits (if any) of the business for that year, after deducting interest on capital, rent, rates, taxes, repairs, wages, and other outgoings, expenses, and charges usually deducted in estimating the net profits of such a business] (*h*).

and percentage on net profits.

(*h*) If the percentage is to be reckoned on gross returns in lieu of the provision in brackets, say—

"And shall also pay to the manager, at the end of each year of the said term, a further sum equal to —— per cent. on the gross profits for the year, without deducting interest on capital or outgoings or expenses properly deducted in estimating net profits only, but deducting bad or doubtful debts,"

and in other parts of the agreement substitute "gross profits" for "net profits." As to the meaning of "profits," see *In re Spanish Prospecting Co., Ltd.*, [1911] 1 Ch. 92; *Re Crabtree*, [1912] W. N. 24. The participation in "profits" under this agreement does not create a partnership: see *Walker* v. *Hirsch*, 27 Ch. D. 460; 54 L. J. Ch. 315; Partnership Act, 1890, s. 2 (3) (b).

Income tax is part of the net profits available for dividends, and should not, therefore, be deducted: see *Johnston* v. *Chestergate Hat Manufacturing Co., Ltd.*, [1915] 2 Ch. 338: but as to excess profits duty under

Provision for payment of proportion of salary, &c. on termination of engagement.

7. In the event of the manager dying or his engagement being terminated before the expiration of the said term, the employer shall forthwith pay to him, or to his executors or administrators, as the case may be, in respect of his services for the whole or any part of the then current year, a due proportion of the said salary of £—— [together with such further sum in lieu of such percentage as aforesaid as shall represent a due proportion of a sum equivalent to [ten] per cent. of the net profits for the then current year of the said business, estimated at a sum equal to the average net profits of the said business for the three years immediately preceding the then current year].

Annual account to ascertain percentage.

8. [In order to ascertain the amount of the further sum payable to the manager in addition to his salary, as aforesaid, an account of the business, to be made up by or under the direction of the employer, and showing the net profits for the year, shall be prepared and furnished at, or as soon as may be after, the end of each year of the said term, to the manager; and on being submitted to, and verified by the certificate of Messrs. ——, or other the accountants or accountant for the time being of the employer, shall be binding and conclusive upon the manager.]

Residence or board or lodging for manager.

9. The employer shall provide the manager during the continuance of the engagement with a suitable residence at ——, or elsewhere, free from rent, rates, and taxes [*or* " with suitable board and lodging, and everything necessary and incident thereto, and the manager shall, if required by the employer, reside in the house in which the business shall for the time being be carried on, in which case he shall have the use of —— rooms therein, properly furnished, and free from rent, rates, and taxes in respect thereof "].

Termination of engagement on notice, &c.

10. The said engagement may be terminated at any time before the expiration of the said term by either party on giving, or sending by post in a registered letter to the other party at his usual place of abode or business, six calendar months' notice in writing, and upon the expiration of six calendar months from the date

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Part III. of Finance (No. 2) Act, 1915, see *Collins* v. *Sedgwick*, [1917] 1 Ch. 179; *William Hollins & Co.* v. *Paget*, *ibid.* 187; *Re Condron*, *ibid.* 639; *Thomas* v. *Hamlyn*, [1917] 1 K. B. 527; *Fellows, Ltd.* v. *Corker*, [1918] 1 Ch. 9; *Patent Castings Syndicate* v. *Etherington*, [1919] 1 Ch. 306; 2 Ch. 234.

V. TO EMPLOY MANAGER, &c.

of such notice being given or posted the engagement shall determine. The employer may at any time terminate the engagement on paying to the manager in lieu of such notice, as aforesaid, six calendar months' salary in advance, in addition to any salary due or accruing up to date [with such further sum in lieu of such percentage as aforesaid for such six months as shall be equal in amount to half the amount which became payable by way of percentage for the then last preceding year, for which an account thereof shall have been made up and verified as aforesaid].

Power to suspend salary or terminate engagement in case of default or incapacity.

11. In the event of the manager at any time wilfully neglecting or refusing, or being incapacitated by illness or any other cause to perform his duties under this agreement, the employer may suspend payment of the salary of the manager [and of any further sums payable by way of percentage] during such neglect, refusal, or incapacity, and may in the like event immediately terminate the engagement of the manager without giving any such notice (*i*) or making any such payment in advance as is provided for in clause 10 hereof.

IN WITNESS, &c.

VI. AGREEMENT *to employ an* AGENT *in a* COLONY *at a* SALARY, *with a* PERCENTAGE *on* SALES (*k*).

Parties.

THIS AGREEMENT, made this —— day of ——, 19—, BETWEEN [*merchants*], of, &c., of the one part, and [*agent*], of, &c., commercial agent, of the other part: WHEREBY IT IS AGREED by and between the parties hereto as follows:—

Interpretation clause.

1. In this agreement the term "the agent" means the said [*agent*], and the term "the principals" includes the said

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(*i*) As to dismissal without notice in the absence of agreement except for misconduct, see *Re African Association, Ltd.*, [1910] 1 K. B. 396; *Nelson* v. *Nelson & Sons, Ltd.*, [1914] 2 K. B. 776; and *In re Rubel Bronze & Metal Co., Ltd.* v. *Vos*, [1918] 1 K. B. 315. As to what constitutes wrongful dismissal, see *Konski* v. *Peet*, [1915] 1 Ch. 530; *General Billposting Co., Ltd.* v. *Atkinson*, [1919] A. C. 118.

(*k*) Stamp. This instrument if executed here will require a British stamp (see *ante*, p. 1), though it relates to acts to be done abroad: *Stonelake* v. *Babb*, 5 Burr. 2675; *Wright* v. *Commissioners of I. R.*, 11 Exch. 458. It may also require to be stamped abroad by the laws of the country where it is used.

VI. TO EMPLOY AGENT IN A COLONY.

[*merchants*], and the survivors and survivor of them, and such person or persons as may from time to time be copartner or copartners in trade with them, or the survivors or survivor of them, and their respective personal representatives.

Engagement of agent for a fixed term.

2. The principals shall employ the agent as their agent, to take care of, conduct, and manage a certain store or warehouse, belonging to the principals, situate at ——, in the British colony of ——, with full and free power and liberty to buy, sell, barter, or exchange any merchandise, stock, cattle, timber, colonial produce, manufactures, corn, hay, or any other article the agent may deem or consider profitable to the interest and benefit of the principals, for the term of —— years from the —— day of ——.

Salary.

3. The principals will, during the said term, pay to the agent for his services the annual salary of £——, by equal quarterly payments on the —— day of ——, &c. in each year, without any deduction except for income tax, and will make the first payment of the said salary on the —— day of —— next. AND FURTHER, the agent shall be allowed a commission of 5*l.* per cent. on all sales above the sum of £—— per annum, which the agent may make or effect, for or on behalf of the principals, in addition to his said annual salary of £——: AND FURTHER, if after the expiration of the said first year of the said term of —— years, the sales to be effected by the agent shall not produce more than the sum of £——, the principals do hereby further agree to pay and allow to the said agent for each year during the remainder of the said term of —— years in which the sales shall be below that sum, as a remuneration for his exertions, the annual salary of £——, in addition to the aforesaid annual sum of £——, to be paid and payable at the same times and in the same manner as is hereinbefore appointed and provided for payment of the said annual salary of £——; And which annual salary or salaries, and percentage, the agent shall be at liberty to deduct and retain, out of the first moneys which shall come to his hands.

Commission on sales beyond a certain value.

Additional salary in lieu thereof, if sales fall short of a certain amount.

Agent may retain salary.

Principals to supply goods, &c.

4. The principals will, at their own proper costs and charges, find and provide for the agent all kinds of goods, wares, merchandises, and other articles and things of every nature and description whatsoever, which he may reasonably demand or deem requisite for the carrying on and conducting the said store or warehouse, or otherwise in the execution, conduct, or management of his office as such agent as aforesaid, so that he may be enabled

VI. TO EMPLOY AGENT IN A COLONY.

to effect sales, and manage, conduct, and carry on the said store or warehouse to the greatest advantage and benefit of the principals.

Agent may reside in adjoining house with his family without paying rent.

5. The agent and his [wife, family, and] servants shall be at liberty to reside in and have the use and occupation of the dwelling-house, and all other the premises, with the appurtenances, now the property of the principals, which adjoin or belong to the said store or warehouse, without paying any rent for the same; and the principals hereby agree, by and at their own costs and charges, to furnish the said dwelling-house with suitable household and other furniture of every nature and description whatsoever [to the approbation of the agent].

Principals to furnish house.

Principals to provide clerks, &c. (*l*).

6. The principals will, at their own proper costs and charges, find and provide the agent with suitable assistants, servants, and workmen, to be under and assist the agent in the business of the said store or warehouse, and in and about the exercise of his office, as agent to the principals.

Principals to provide board and lodging for agent's family, clerks, &c.

Agent to deduct expenses.

7. The principals will also find and provide the agent and his [wife, family, and] servants, and all assistants, servants, and workmen, both male and female, who may be so employed by the agent as aforesaid, with suitable board and lodging, and everything necessary or incident thereto: And all such sum and sums of money, costs, charges, and expenses which may be expended or incurred in the providing of such board and lodging, and also in the payment of all assistants, servants, workmen, and other persons' wages who may be employed for the purposes aforesaid, the agent shall be at liberty to deduct, retain, and reimburse by and out of the first moneys which shall come to his hands.

Principals to send out agent with his family and goods at their expense.

8. The principals will pay the boat and railway fares, and other costs, charges, and expenses of or incident to the conveyance of the agent, and his [wife, family, and] assistants, servants,

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(*l*) Instead of this clause insert, if desired, the following:—

"The agent shall have full power, at his discretion, but at the cost and charge of the principals, to engage, either in England or in the said colony, and to employ such assistants, servants, and workmen as he shall deem necessary for the due carrying on and management of the said store or warehouse, and shall have a like power to dismiss all or any of such assistants, servants, and workmen if and when he shall think fit."

and any household or other furniture, goods, chattels, property, or effects which the agent or his [family or] assistants or servants may think proper to take with them to the said colony, all their hotel and other expenses of and incident to their journey thither; and also all railway and other fares, and hotel and other expenses of and incident to any journeys which the agent shall at any time hereafter be required by the principals to take for the purposes of their said business. VI. TO EMPLOY AGENT IN A COLONY.

9. In case the agent should not approve of the situation as agent to the principals in the said colony, or in case the climate should not agree with the health of himself or family, the agent shall, upon giving —— weeks' [calendar months] notice in writing to the principals, be at liberty to give up his employment as such agent as aforesaid, and to return to England, and then, and in such case, these presents, and every clause, matter, and thing herein contained shall cease determine and be utterly void to all intents and purposes, anything to the contrary thereof in anywise notwithstanding; and in such case the principals will, upon the expiration of such notice, so to be given as aforesaid, at their own proper costs and charges, reconvey the agent and his wife, family, assistants, and servants, and any goods, chattels, property, or effects they may think proper to bring back again with them, to the port of London. Agent may determine agreement on giving notice. Principals to bring agent and family and goods home.

10. The agent will, during the said term of —— years, if he shall so long live, well, diligently and faithfully, to the utmost of his power, serve the principals as their agent, and take upon himself the care, conduct, and management of their trade at the said store or warehouse; And will, at all times during the said term, receive and take into his care and custody, all such goods and merchandise whatsoever as by or for the use or on the account of the principals shall be conveyed or sent to the agent, and will sell, barter, and dispose of the same goods and merchandise to the best profit he can for the principals; And also will, at all times during the said term, follow and perform the advice, direction, and orders of the principals, which shall, by letters or otherwise, be sent, given, or made known to him the agent, concerning such store or warehouse and merchandise as aforesaid. Agent to act diligently and faithfully during term. To receive goods and dispose of goods. To obey directions of principals.

11. The agent will, at the costs of the principals, provide and keep in good order such proper books of account and other- To keep books of account.

VI. TO EMPLOY AGENT IN A COLONY.

wise, concerning his employment as such agent as aforesaid, as are usual according to the custom of agents to merchants in such cases: AND will deal justly, truly, and faithfully with the principals in all and every his accounts, reckonings, bargains, and dealings, relating to and concerning his said employment as such agent as aforesaid: AND will constantly, once in every year during the said term of —— years, determinable as aforesaid, transmit and send to the principals true accounts of all the business and dealings of him the agent in the premises; AND ALSO will send letters of advice to the principals of all such measures and occurrences wherewith it shall be proper and expedient that the principals be acquainted.

To deal justly.

To transmit accounts annually.

To advise principals of all important matters.

To produce books of account, on request.

To render goods or moneys due.

12. The agent will, from time to time, upon every reasonable request of the principals, produce to them, or either of them, all his said books, and make and give to them a just and perfect account of and concerning all and every such goods, wares, money, and merchandise of the principals which shall hereafter come to his hands and charge, or for which he should or ought to be accountable to the principals; and, moreover, will, within —— months after every such annual account shall be made or given in, well and truly pay and deliver over to the principals all and every such money, wares, goods, merchandise, and other effects and things as by such account shall appear to be due from him to the principals, and shall by them be required to be so paid and delivered over.

AS WITNESS, &c.

VII. AGREEMENT *to employ a* FACTOR, *to be* REMUNERATED *by a* SHARE *of* PROFITS, *with* WEEKLY DRAWINGS (*m*).

Parties.

AN AGREEMENT, made the —— day of ——, 19—, BETWEEN [*factor*], of, &c., of the one part; and [*four copartners, principals*], all of, &c., of the other part. WHEREBY IT IS AGREED by and between the said parties hereto as follows, that is to say:—

Interpretation clause.

1. In this agreement the term "the factor" means the said

(*m*) Stamp, 6*d*. (if not under seal), in respect of the agreement to employ, and a further 10*s*. for the power of attorney in clause 25.

VII. TO EMPLOY A FACTOR.

[*factor*], and the term "the principals" includes the said [*principals*], and the survivors and survivor of them, and such person or persons as may from time to time be copartner or copartners in trade with them, or the survivors or survivor of them, and their respective personal representatives.

Agreement to act as factor for —— years.

2. The factor will act as the factor or agent of the principals in the vending of ——, for the term of —— years from the date hereof, determinable nevertheless as hereinafter mentioned, and will conduct and carry on the said agency, at the shop or warehouse of the principals, in —— Street, in the city of London, or in such other shop or warehouse, in the said city of London, as they may direct or appoint for that purpose.

Conduct of business.

3. The factor shall not assign, transfer, or make over the said agency or this contract to any person or persons without the consent in writing of the principals, but will give his whole time and attention to the said agency, and will not during such time as he shall act as such factor or agent as aforesaid, otherwise than as factor on behalf of the principals, engage or be concerned or interested in buying, selling, or dealing in ——, or in any other business whatsoever, directly or indirectly, either on his own account, or as a factor or agent, and either alone or in copartnership with any person or persons whomsoever, without the consent in writing of the principals (*n*).

To take care of the goods committed to his charge.

4. The factor will carefully deposit and preserve, in the shop or warehouse for the time being made use of for the purpose of the said agency business, all such goods, wares, and merchandise, as may be sent or transmitted to him by the principals.

To procure best sale for ready money or to persons of good credit.

5. In managing and conducting the said agency, the factor will use his best endeavours to procure the greatest possible sale of the —— and other goods which he shall be employed to sell as such factor as aforesaid, either for ready money, or to persons whom, after due inquiries, he shall ascertain to be persons of responsibility, and worthy to be trusted; AND, upon making every

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(*n*) As to agreement in restraint of trade, see *post*, Prec. X., p. 38, note (*g*). An agent must account for secret profits made by him in the course of his agency: see *Imperial, &c. Association* v. *Coleman*, L. R. 6 H. L. 189; *Kimber* v. *Barber*, L. R. 8 Ch. 56; *Williamson* v. *Hine*, [1891] 1 Ch. 390; *Gluckstein* v. *Barnes*, [1900] A. C. 240; and so must a sub-agent: see *Powell* v. *Evan Jones & Co.*, [1905] 1 K. B. 11.

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such inquiry, will make a minute or memorandum thereof, in a book to be kept for that purpose, specifying the name of the person applying to purchase on credit, the name or names of the person or persons applied to for the purpose of knowing whether such person might be trusted with safety, and also specifying what was said upon the subject by such person or persons so applied to.

Limits as to giving credit.

6. The factor will not give credit to any person or persons for a greater length of time than ——, without the consent in writing of the principals; AND will not, without such consent, sell to any person on credit to a greater amount than the sum of £——;

Not to pledge goods or compound debts, &c.

AND will not, without such consent, pledge any goods or merchandise transmitted to him as aforesaid (*o*), or release or compound any debt, claim, or security relating to the premises, or abandon or compromise any action or other proceeding in respect of any such debt, claim, or security.

To act according to directions of principals.

7. The factor will, in conducting the said agency, conform to such orders, instructions, and directions, as he may from time to time receive from the principals; AND where he shall receive no special orders or directions, will act in such manner as he shall judge to be most conducive to the advantage of the principals.

To account for and transmit moneys, &c. received to principals.

8. The factor will, from time to time, account for and transmit to the principals all moneys, bills, and securities for money, received from the sale of any ——, or other goods sold by the factor, as such factor or agent as aforesaid.

To accept principals' bills when he has assets in hand (*p*).

9. The factor will, from time to time, in case he has assets in his hands, accept and duly pay all such bill and bills of exchange as may be drawn upon him by the principals, and of which he may receive due notice from them.

To transmit monthly account of affairs to principals.

10. The factor will, from time to time, on the first day of every month, send and transmit to the principals a full, clear, and correct statement in writing of all orders, both taken and executed, and of all goods which may have come to his hands; and also of all such goods as he may have sold, to whom, and whether for

(*o*) See *Weiner* v. *Harris*, [1910] 1 K. B. 285; *Portalis* v. *Tetley*, L. R. 5 Eq. 140; and the Factors Act, 1889.

(*p*) The factor should be careful to sign on behalf of his principals or in a representative character: see Bills of Exchange Act, 1882, s. 26; and see also *Chapman* v. *Smethurst*, [1909] 1 K. B. 927.

ready money, or on credit; and likewise of all such other matters, transactions and things as in anywise concern the said agency business, and which may have taken place during the preceding month. VII. TO EMPLOY A FACTOR.

11. The factor will keep books of account, in which shall be made plain and correct entries of all goods received from the principals, and also of all goods sold and delivered by him, the factor, as such factor or agent as aforesaid, and also of all orders received and taken; and of all other matters, transactions, and things in anywise concerning the said agency business: AND will, on the —— day of ——, and the —— day of ——, in each and every year, unless either the said days shall happen on a Sunday, and in that case on the day following, accurately cast up and balance the said books of account, in order that the true state of the said agency business may clearly appear therefrom. To keep account books. To balance account books every half-year.

12. It shall be lawful for the principals, or any of them, at all seasonable hours in the day-time, to have free access to the said books of account, and to all other books, papers, documents, and writings in anywise touching or concerning the said agency business; and to take copies of or extracts from the same or any of them; And which books of account, papers, documents, and writings, he, the factor, will carefully preserve (damage by fire and other inevitable accidents only excepted); and, upon the final settlement and winding-up of the said agency business, will give and deliver up the same books, documents, and writings, undefaced and unobliterated, to the principals, or other the person or persons lawfully entitled thereto. Principals to have access to inspect the accounts, &c. Account books to be carefully preserved.

13. Upon the taking of every half-yearly account, as provided by clause 11 hereof, a copy of such account, signed by the factor [and verified by the statutory declaration of himself, or of the person or persons whom he shall have employed to make up the said account], shall be forwarded to the principals, and shall, unless the principals, or any of them, shall within —— days after the receipt thereof object to the same, and notify such objection in writing to the factor, be deemed to be finally settled and binding upon the parties hereto respectively. Copies of accounts to be forwarded to principals.

14. Upon the settlement of each half-yearly account the factor shall be entitled to receive one ——th share of such a sum as shall by such account be shown to represent the gross profits of the Factor entitled to share of gross profits (*q*).

(*q*) See *ante*, p. 18, note (*h*).

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business carried on at the shop or warehouse aforesaid, for the preceding half year.

Weekly drawings.

15. The factor may every week, during such time as he shall act as such factor or agent as aforesaid, draw out for his own use, on account of his share in the said gross profits, the sum of £——; but if at the end of any half year it shall appear, upon taking the half-yearly account as aforesaid, that the share of gross profits, to which he is entitled at that date, does not amount to the aggregate of the weekly drawings made by him during the then preceding half year, then he shall within —— days after such account shall have been taken as aforesaid, refund the difference, but without interest.

Factor to reside in rooms over warehouse, rent free.

16. The factor, during such time as he shall act as such factor or agent as aforesaid, shall have the exclusive right, with his family and servants, to reside in the dwelling-house, with the appurtenances, over the said shop or warehouse free from the payment of rent, rates, or taxes for the same.

Factor to provide a clerk and porter.

17. The factor will, at his own costs and charges, find and provide a clerk or typist who understands accounts and book-keeping, for the purpose of constantly assisting him, the factor, in the management of the said agency business: And also find and provide a porter for the purpose of assisting in the said business.

Repayment to factor of sums paid for carriage of goods, &c.

18. The principals will pay to the factor, once every six months, all such sums of money as he may have paid, for or on account of books, paper and stationery, made use of in and about the said agency business; And also all such sums as he may have paid for the postage of letters relating to the said agency business; And for the carriage of goods, wares, and merchandise sent to him by the principals.

No other person to be employed as factor.

19. The principals will not themselves sell or employ any other person as a factor or agent in the vending of ——, within the city of London, during such time as the said factor shall act as such factor or agent as aforesaid.

Factor not to be answerable for involuntary losses.

20. The factor shall not be answerable for any loss or damage which may happen to or be incurred in or about the said business conducted by him as such factor or agent as aforesaid, unless such loss or damage happen through his wilful neglect or default.

Power for factor to determine

21. In case the factor shall, at any time before the expiration of the said term of —— years, be desirous of giving up the said

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agency business, it shall be lawful for him so to do, upon giving six calendar months' previous notice in writing of such his intention to the principals, or by leaving such notice at their usual places or place of abode or business.

agreement on giving six months' notice.

22. If the principals shall, at any time before the expiration of the said term of —— years, be minded and desirous to discharge the factor from being such factor or agent as aforesaid, it shall be lawful for them so to do upon giving to him six calendar months' previous notice in writing of such intention, or upon leaving such notice at the shop or warehouse for the time being made use of by the factor in the said agency business, anything herein contained to the contrary notwithstanding.

Power for principals to discharge factor, on giving six months' notice (*r*).

23. In case of the death of the factor before the expiration of the said term of —— years, or of his resignation or discharge as hereinbefore provided, his personal representatives, or himself, as the case may be, shall immediately upon the happening of any such event be entitled to receive a proportionate allowance in lieu of profits to be calculated as from the last preceding half-yearly account taking, and according to the share of profits (if any) of the factor as shown by the same account taking. If, at the time of the happening of any such event as in this clause mentioned no half-yearly account shall have been taken, a special account shall be taken for the purpose of ascertaining the allowance to be made.

Proportionate allowance in lieu of profits in case of death, &c.

24. If at any time the principals or any of them shall object to the half-yearly accounts rendered and forwarded to them in manner aforesaid, or if any dispute or difference shall at any time arise between the factor or his personal representatives, on the one part, and the principals or any of them, on the other part, for or on account of any matter or thing herein contained which shall not within one calendar month after the same shall arise be fully decided between the parties in difference themselves, then and in every such case, the matter of every such account, difference or dispute shall be referred to the hearing of three indifferent persons, to be chosen, one by the factor or his personal representatives, another by the person or persons in difference or dispute with him or them, and a third by the two first persons

Arbitration clause.

(*r*) As to wrongful dismissal, see *ante*, p. 20, note (*i*).

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so first chosen: AND this shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statutory modification or re-enactment thereof for the time being in force.

Power of attorney to factor to receive debts.

25. The principals appoint the factor their attorney, for them, and in their names or otherwise, and for their use, to ask, sue for, recover and receive, all and every such sum and sums of money as shall or may be due or owing from any person or persons, for or on account of any goods or merchandise sold by him as their agent or factor as aforesaid, and to give receipts and sufficient discharges for the same; and for all or any of the purposes aforesaid, from time to time to appoint a substitute or substitutes, and such substitution at pleasure to revoke; they the principals hereby ratifying and confirming all and whatsoever he the factor or any such substituted attorney or attornies shall lawfully do or cause to be done in and about the premises (*s*).

No partnership created.

26. Nothing herein contained or to be done in pursuance hereof shall be construed or taken in any way to constitute a partnership between the factor and the principals, or to give to or impose upon the factor any of the rights or liabilities of a partner in the same business (*t*).

IN WITNESS, &c.

VIII. AGREEMENT *for the* EMPLOYMENT *of a* MANAGER *of a Limited Company at a fixed Salary and Commission on Profits* (*u*).

Parties.

ARTICLES OF AGREEMENT, made this —— day of ——, BETWEEN the —— Company (Limited), whose registered offices are at ——, of the one part, and A. B., of, &c., of the other part. WHEREBY it is agreed by and between the said parties hereto as follows:—

Agreement for service and salary.

1. The said A. B. who since the —— day of —— last has been, shall henceforth continue to be one of the general managers

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(*s*) As to the power of a factor to pledge the property of his principal, see *Portalis* v. *Tetley*, L. R. 5 Eq. 140; and the Factors Act, 1889 (52 & 53 Vict. c. 49).

(*t*) This clause is merely declaratory, as this agreement does not create a partnership: *Walker* v. *Hirsch*, 27 Ch. D. 460.

(*u*) Stamp, 10*s*.

in London of the said —— Company (Limited) (hereinafter called "the company"), for the term of seven years, to be computed from the —— day of —— aforesaid, if he shall so long live, at a salary of £—— a year for the first year of the said term, and of £—— for every subsequent year of the said term, and the company shall pay such respective salaries to the said A. B. (hereinafter called "the manager"), by equal quarterly payments, on the —— day of ——, &c., in each year, or within —— days after the said payments shall become due respectively, and shall pay to his executors or administrators a proportional part of the said salary for the interval between the last quarter day and the death of the said manager; which part shall be payable on the next day of payment as aforesaid (*v*).

Commission on surplus net profits.

2. During such term of seven years, whenever, not being less frequently than once in every year, an account of the company's business shall be made up for the purpose of showing the net profit made by it for some then bygone period, and there shall appear according to such account to have been made a net profit in such period over which such account shall extend, exceeding the rate of —— per cent. per annum on the paid-up capital for the time being, the company shall pay to the said manager, in addition to his said salary, a commission of —— per cent. on the amount of such net profit beyond the said rate of —— per cent. per annum on the paid-up capital of the company for the time being.

Determination of engagement on manager's bankruptcy, &c.

3. If the said manager shall at any time before the expiration of the said term of seven years be adjudicated bankrupt, or fraudulently misappropriate any of the assets of the company, or be guilty of any gross default or misconduct in his office, then immediately on the happening of any such event this agreement shall cease and determine, but without prejudice to any right of action or suit which may have accrued; but if in any other case, the company shall during the said term of seven years remove

(*v*) In the event of the compulsory winding-up of the company before the expiration of the term, the manager can claim for arrears of salary and commission up to the winding-up, and for loss of salary (if damages on this head are proved), but not damages for loss of commission during remainder of term: *Re R. S. Newman* (*Raphael's Claim*), [1916] 2 Ch. 309. As to whether a voluntary winding-up terminates the agency, see *Midland Counties District Bank* v. *Allwood*, [1905] 1 Ch. 357; *Reigate* v. *Union Manufacturing Company* (*Ramsbottom*), [1918] 1 K. B. 592.

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the said manager from his said office, then the company shall nevertheless pay to him, during the residue of the said term of seven years, or till his earlier decease, the amount of the said salary by equal quarterly payments as aforesaid, and with such proportional part as aforesaid, but not the said commission for any period after such removal; the payment of the said salary in manner aforesaid to be as and for ascertained and liquidated damages for such removal: PROVIDED ALWAYS that the said manager shall be considered as removed from his said office within the meaning of this clause if the company shall at any time during the said term of seven years be dissolved or wound up, or the business thereof be discontinued, in such manner that the said manager shall thereby cease to be employed in his said office without being appointed in lieu thereof a manager on the same or better terms of any company to which the business of the said company shall have been transferred, and the time of his so ceasing to be employed shall be considered to be the time of such removal. PROVIDED ALSO that in such case all then future payments of the said salary shall become due and payable immediately on the commencement of such winding-up or process of dissolution, or on such discontinuance of the business of the said company as if the said term had expired, and the said manager had lived to the end thereof, and may be sued for and recovered by him accordingly.

Proportionate allowance in respect of commission in event of manager's death.

4. In the event of the termination of the engagement hereby made by the death of the said manager during the said term of seven years, or his removal from his said office for any cause other than his bankruptcy, or such default or misconduct as aforesaid, the company shall forthwith pay to his executors or administrators, or to him as the case may be, and in the event of the said manager continuing to be one of such general managers as aforesaid, during all the said term the company shall pay to him a commission at the rate in the second clause hereinbefore mentioned on such excess, if any, as in the same clause mentioned on the net profit made from the foot of the last account of such profit till the time of such death or removal of the said manager, or to the expiration of the said term, as the case may be; provided that it shall not under that clause be necessary for the company to make out any special account for the purpose of ascertaining the amount of such commission, but that such commission shall be payable at the next time when in the ordinary course of the management of

the company, not being less frequently than once in every year, an account of net profit would be made out, and the amount shall be determined by the net profit during the period covered, or which ought to be covered by such account, according to the said ordinary course of management, and in proportion to the length of that part of the same period for which such commission shall be payable.

Conduct of business.

5. The said manager shall diligently and faithfully serve the company, and promote the success thereof to the best of his ability in the office of one of its general managers in London during the said term of seven years, if he shall so long live, devoting his whole time and attention to the business of the company and the duties of the said office, except [as hereinafter provided and] so far as he may be incapacitated by illness from so doing, and except on Sundays, or Good Fridays and Christmas Days, and Bank Holidays, and on Saturdays when there shall be no special exigency to the contrary, and during such reasonable holidays as may from time to time be agreed on between him and the company or the directors thereof.

Manager to ac according to directions of the company or its directors, &c.

6. The said manager shall, whilst in such service as aforesaid, conform himself to all lawful and reasonable directions, whether general or special, as to the conducting by him as one of such managers as aforesaid of the business of the company, which may from time to time be given to him, either by the company or by the directors thereof, and shall not divulge any secret of the company to any person, partnership, or corporation dealing with the company, and shall duly give directions for proper entries to be made in the books of the company, kept for that purpose, of all money, receipts, payments, dealings, and transactions which shall be given, made, entered into, or authorised by him touching or affecting the company, and shall duly account for all moneys received by him on account of the company, and shall keep or cause to be kept, at the offices of the company or elsewhere, as the directors thereof shall appoint, all correspondence, vouchers, and other documents which may concern the company, and ought in the ordinary course of business to be preserved, and shall at all times afford to the directors and all other members of the company entitled to demand the same, full explanations as far as may be in his power, of any dealings or transactions of or affecting the company.

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Manager not to engage in other business.

7. During the said term of seven years, except in case of his removal from his said office for any cause other than his bankruptcy or such default or misconduct as aforesaid, the said manager shall not carry on or be concerned with any other person or persons carrying on, or be a director of any company carrying on, or be employed by any person or persons or company carrying on, or except under this agreement be in any way engaged or concerned or interested (*x*) in any such trade or business as the company shall for the time being be carrying on; provided that nothing in the present clause contained shall be construed so as to restrict the previous provision for the devotion of his whole time and attention by the said manager to the business of the company [*or*, be construed so as to apply to any interest or connection of the said manager as capitalist or accountant, but not as a partner in or with the firm or house of ——, or the person or persons constituting that firm or house from time to time].

Company to furnish manager with account of profits.

8. The company shall at least once in every of the said seven years, or within six weeks from the end of each such year, make out a true and just account so as to show what profit has been made by it, and shall make out the first of such accounts for a period commencing with the said —— day of —— last past, and every subsequent account for a period commencing at the end of the period for which the last preceding account shall have been made out.

Copy of account signed by manager to be conclusive.

9. A copy of every annual account shall be furnished to the manager, and shall, unless he shall have given notice in writing to the secretary of the company of his intention to object to the same, be signed by him within —— days after the taking of such accounts; and the account so signed shall be deemed to be finally settled and to be conclusively binding on the manager and all persons claiming under him, except that if and whenever any

(*x*) As to the effect of a covenant not to become "concerned" or "interested" in a business, see *Smith* v. *Hancock*, [1894] 1 Ch. 377; *Gophir Diamond Co.* v. *Wood*, [1902] 1 Ch. 950; *Cory & Son, Ltd.* v. *Harrison*, [1906] A. C. 274; *Cavendish* v. *Tarry*, 52 Sol. J. 726. As to the effect on this covenant of a compulsory winding-up of the company, see *Measures, Bros., Ltd.* v. *Measures*, [1910] 2 Ch. 248.

manifest error shall be found therein, within six calendar months after its being so signed, such error shall be ratified (*y*). VIII. EMPLOYMENT OF A MANAGER.

As WITNESS, &c. (*z*).

IX. AGREEMENT *to pay for* GOODS *to be* FURNISHED *to a* THIRD PERSON (*a*).

AGREED this —— day of ——, BETWEEN A. B., of, &c., of the one part, and C. D. and E. F., both of, &c., warehousemen, trading under the firm of D. & Co., of the other part, as follows:— Parties.

WHEREAS the said A. B. has requested C. D. and E. F., trading under the style or firm of D. & Co., to supply G. H. (a relative of the said A. B.), with goods on credit, which he has

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(*y*) If an arbitration clause is desired, the form given *ante*, p. 8, clause 15, may easily be adapted.

(*z*) As to the formalities to be observed in making contracts on behalf of a company, see Companies (Consolidation) Act, 1908 (8 Edw. 7, c. 69), s. 76.

(*a*) No stamp required, as it relates to the sale of goods: see *ante*, p. 2. An agreement of this nature is required to be in writing. An undertaking to pay for goods furnished to, or money paid on behalf of an infant, is original, not collateral, for the infant cannot be liable, and there is no privity between the infant and the person who furnished the goods, or paid the money: *Harris* v. *Huntback*, 1 Burr. 373. An agreement of this kind is often contained in a letter, and may then be expressed as follows:—

[" *Date.*]

" Gentlemen,—In consideration of your agreeing to supply my son, A. B., with goods on credit, on my guarantee hereinafter contained, I hereby undertake to be answerable for the current balance, which shall or may at any time be due from him to you on account of such goods, not exceeding the sum of £——: and this guarantee shall not be affected by the death or retirement of any member of your firm, or the addition of any partner or partners thereto, but shall extend to the goods supplied by the firm so altered; nor shall this guarantee prevent my said son from being liable to pay for any goods so furnished to him as aforesaid. I am, &c."

[*Signature.*]

IX. GUARANTEE OF PAYMENT FOR GOODS TO BE SUPPLIED TO THIRD PERSON.

consented to do on A. B. entering into the agreement hereinafter contained. NOW THEREFORE, in consideration of the premises, A. B. hereby undertakes and agrees with C. D. and E. F., to pay unto C. D. and E. F. or their successors in the said firm, all and every such sum and sums of money, as shall from time to time be due from G. H. to the said firm, for goods sold and delivered unto, or on the account, or for the use of G. H., not exceeding on the whole the sum of £——: PROVIDED nevertheless, that this guarantee shall not be considered as satisfied in the whole or in part by the payment by G. H. of any sum or sums of money, on account of goods to be supplied to him as aforesaid, but shall continue and extend to cover the balance for the time being due from the said G. H. to the said firm on the account aforesaid, not exceeding the amount hereinbefore mentioned (*b*). This guarantee may be revoked at any time, and shall be deemed to be revoked upon notice being given to the said C. D. and E. F. of the death of the said A. B., but shall remain in force up to the time of such revocation (*c*).

AS WITNESS, &c.

X. AGREEMENT *for* SERVICE *as an* ASSISTANT *to a* MEDICAL PRACTITIONER (*d*).

Parties.

ARTICLES OF AGREEMENT, made the —— day of ——, 19—, BETWEEN A. B., of, &c., physician and surgeon (hereinafter called "the employer"), of the one part; and C. D., of, &c. (hereinafter called "the assistant"), of the other part.

Agreement to employ and serve.

1. The employer agrees to employ the assistant, and the assistant agrees to serve the employer as assistant in his profession and practice of physician, surgeon, and general medical practitioner, from the —— day of ——, for the period of —— years and thereafter, unless and until this engagement is terminated as hereinafter provided.

(*b*) See *Ellis* v. *Emmanuel*, 1 Ex. D. 157.

(*c*) In the absence of express stipulation the guarantee will not be revoked merely by the death of the guarantor: see *Re Crace*, [1902] 1 Ch. 733.

(*d*) Stamp, 6*d*., if not under seal.

X. FOR SERVICE AS ASSISTANT TO A MEDICAL PRACTITIONER.

2. So long as the assistant shall remain in the service of the employer, he shall give his whole time to such service, and shall serve the employer faithfully and diligently, and to the best of his ability promote the interests of the employer, and shall at all times obey and comply with his lawful commands and directions in relation to the said profession and practice. Faithful and diligent service.

3. The assistant shall not, without the consent of the employer, disclose any of the secrets or affairs of the said profession or practice. Secrets of the business.

4. The assistant shall not at any time, without the consent of the employer [except by reason of sickness or inevitable accident] absent himself from such service as aforesaid [and in case the assistant shall be absent from such service by reason of sickness or inevitable accident for more than —— days, the employer may, if he thinks fit, appoint a substitute, and remunerate him out of the salary of the assistant] [and if the assistant shall absent himself from such service without the consent of the employer for any cause other than sickness or inevitable accident, then, for every day of such absence he shall pay to the employer the sum of £—— as liquidated damages]. Absence from service.

5. The employer shall during such service as aforesaid, pay to the assistant, so long as he duly and faithfully performs the agreements on his part herein contained, a salary of £—— per annum, and so in proportion for any less period than one year by equal quarterly payments, the first payment to be made on the —— day of ——. Salary.

6. Either party may determine this engagement at any time after the —— day of —— by giving to the other party —— calendar months' notice in writing, expiring at any time after such day, or leaving such notice, addressed to such other party, at the surgery or place of business of the employer. Termination of engagement (*e*).

7. The assistant shall not at any time during such service as aforesaid, or within —— years after he shall have left such service, practise, carry on, or be interested in (*f*) the profession or Agreement not to practise in district,

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(*e*) See *ante*, p. 29, note (*n*).

(*f*) See note (*x*), p. 34, *ante;* and as to the effect of a covenant "not to practise," see *Sewell* v. *Wright*, 50 Sol. J. 223; and *Robertson* v. *Willmott*, (1909) W. N. 155.

X. FOR SERVICE AS ASSISTANT TO A MEDICAL PRACTITIONER.

practice of a physician, surgeon, accoucheur, or apothecary, or general medical practitioner, at —— aforesaid, or within —— miles thereof, either directly or indirectly, in his own name or in the name or names of any other person or persons, or enter into the service of any person or persons other than the employer as assistant or otherwise, in, or in relation to any such profession or practice within the limits aforesaid, or endeavour or attempt, directly or indirectly, to induce any person or persons to cease from consulting or employing the employer, or to consult or employ any person or persons other than the employer within the limits aforesaid, in the way of his profession or practice (*g*).

or solicit customers.

AS WITNESS, &c.

Agreements in restraint of trade.

(*g*) "Agreements in restraint of trade are against public policy and void unless the restraint they impose is partial only and they are made on good consideration and are reasonable": *Collins* v. *Locke*, 4 App. Cas. at p. 686; and *Goldsoll* v. *Goldman*, [1914] 2 Ch. 603. They must not unduly fetter the free disposal of an employee's labour: see *Horwood* v. *Millar's Timber and Trading Co.*, [1917] 1 K. B. 305; *Hepworth Manufacturing Co.* v. *Ryott*, [1920] 1 Ch. 1. The restraint must be "partial," *i.e.*, not unlimited both as to time and space (*Davies* v. *Davies*, 36 Ch. D. 359), and "reasonable," *i.e.*, reasonably necessary for the protection of the particular business: *Nordenfelt* v. *Maxim Nordenfelt, &c. Co.*, [1894] A. C. 535; *Morris & Co.* v. *Ryle*, 54 Sol. J. 748; *Leetham & Sons, Ltd.* v. *Johnstone-White*, [1907] 1 Ch. 322; and from the point of view of the employee and the public, see *Morris* v. *Saxelby*, [1915] 2 Ch. 157, and [1916] 1 A. C. 688. As to what is "reasonable," see *Robinson & Co., Ltd.* v. *Heuer*, [1898] 2 Ch. 451; *Underwood & Co., Ltd.* v. *Barker*, [1899] 1 Ch. 300; *Haynes* v. *Doman*, [1899] 2 Ch. 13; *Ehrman* v. *Bartholomew*, [1898] 1 Ch. 671. The restraint may be unlimited as to time: *Haynes* v. *Doman, ubi sup.* As to limitation as to space, see *Leather Cloth Co.* v. *Lorsont*, L. R. 9 Eq. 345; *Rousillon* v. *Rousillon*, 14 Ch. D. 351; *Badische, &c. Fabrik* v. *Schott*, [1892] 3 Ch. 447; *Evans & Co.* v. *Heathcote*, [1918] 1 K. B. 418; *Nordenfelt* v. *Maxim Nordenfelt, &c. Co.*, [1894] A. C. 535, where the whole subject is discussed at length. Where a limit of space is fixed the distance must be measured in a straight line: *Mouflet* v. *Cole*, L. R. 8 Ex. 32. As to the restriction on soliciting customers being confined to customers at the time of the agreement or during the period of service, see *Baines* v. *Geary*, 35 Ch. D. 154; *Dubowski & Sons* v. *Goldstein*, [1896] 1 Q. B. 478; *Konski* v. *Peet*, [1915] 1 Ch. 530; and as to whether the agreement is severable when part of it is good, see *Baines* v. *Geary, ubi sup.*; *Baker* v. *Hedgecock*, 39 Ch. D. 520; *Davies* v. *Davies*, 36 Ch. D. 359; and *Dubowski* v. *Goldstein, ubi sup.*;

XI. DEED OF AGREEMENT *by a* RAILWAY COMPANY *to execute* WORKS *for the* ACCOMMODATION *of the* OWNER *of* LANDS *adjoining the* RAILWAY.

XI. TO EXECUTE ACCOMMODATION WORKS.

THIS DEED (*h*), made the —— day of ——, 19—, BETWEEN the X. and Y. Railway (hereinafter called "the company"), of the one part, and A. B., of, &c. (hereinafter called "the owner"), of the other part: WHEREAS the owner is seised of or otherwise entitled for an estate in fee simple in possession to (amongst other hereditaments) the several pieces of land and hereditaments described in the schedule hereto, and which being required by the company for the purposes of their works were recently agreed to be purchased by them: AND WHEREAS by a deed bearing even date with, but to be executed after, this agreement the said pieces of land and premises are intended to be conveyed unto and to the use of the company and their assigns: AND WHEREAS upon the treaty for the said purchase it was agreed that the company should make the payments and execute the several accommodation and other works hereinafter mentioned respectively, and should enter into the stipulations hereinafter contained and on their part to be observed and performed: NOW THIS DEED WITNESSETH, and it is hereby agreed and declared, and the company do hereby (so far as relates to the stipulations on their part to be observed and performed) covenant with the owner in manner following, that is to say:

Parties.

Recitals; of agreement for sale of lands to company;

of conveyance to company;

of agreement to execute works, &c.

1. The company shall previously to the opening for traffic of

To make and maintain

Continental Tyre & Rubber Co. v. *Heath*, 29 T. L. R. 308; *Attwood* v. *Lamont*, 3 K. B. 1920, at p. 593. An agreement in restraint of trade which is unreasonable is not void in the case of a trade union, though not enforceable: see *Evans & Co.* v. *Heathcote, ubi sup.*; see also *McEllistrim* v. *Ballymacelligott Co-operative Agricultural Dairy Society*, [1919] A. C. 548. A covenant or agreement in restraint of trade will be enforced against an infant if the agreement as a whole is for his benefit: *Evans* v. *Ware*, [1892] 3 Ch. 502; *Bromley* v. *Smith*, [1909] 2 K. B. 235; but not where the restriction is wider than is reasonably necessary for the protection of the plaintiff's interest: *Leng & Co., Ltd.* v. *Andrews*, [1909] 1 Ch. 763. For the law as to agreements in restraint of trade, see, further, Norton on Deeds; and *Mitchel* v. *Reynolds*, 1 Smith, Leading Cases, 11th ed. 406; and see *Wilson* v. *Harper*, [1908] 2 Ch. 370; and *Horwood* v. *Millar's Timber, &c. Co., ubi sup.*

(*h*) Stamp, 10*s*.

XI. TO EXECUTE ACCOMMODATION WORKS.

the said intended railway or any part thereof, make and for ever after maintain, fit for the convenient passage thereover respectively of agricultural waggons, locomotives, and carriages, such roadways or paths each of the width of ten feet at the least, with such culverts and works thereunder respectively as are next hereinafter mentioned or referred to [*describe these works in detail*]: AND ALSO shall at their own cost make, and for ever maintain in good and sufficient repair and condition, suitable gates, each of sufficient width for the passage of such waggons, locomotives, and carriages, over or upon all the several roadways or paths hereinbefore mentioned: AND ALSO shall at the like cost make, and in like manner maintain in good and sufficient repair, culverts, tunnels, and other necessary works under the said several roadways or paths, so as that the same respectively shall not in any way hinder or obstruct the free passage of water through the several drains or ditches over which the same roadways or paths shall respectively pass.

road, gates and culverts.

To make and maintain drains.

2. The company shall make, and for ever maintain and keep open two main drains to be made parallel with and adjoining to the said intended railway, the one on the eastern and the other on the western side thereof, so that an effectual watercourse may be maintained and continued along the said intended railway for such distance as the same shall pass through or adjoin upon lands belonging to the owner.

To make and maintain tunnels.

3. The company shall make, and for ever maintain, and keep in good repair for the purpose of carrying off the water from such of the lands lying adjacent to the said pieces or parcels of land described in the schedule hereto, as are situate on the eastern side of the said intended railway a circular tunnel under the same railway of the width or diameter throughout of —— feet at the least, to run between the pieces of land first and secondly described in the said schedule, and to be in the same position and direction as nearly as circumstances will permit as is the drain or ditch which now separates the same pieces of land respectively the one from the other, which position and direction are delineated in the plan drawn in the margin of these presents by a line or mark coloured blue.

To make and maintain crossings.

4. The company shall make, and for ever repair and maintain fit for use and suitable for the passage thereover respectively of agricultural waggons, locomotives, and carriages, the several

passages or crossings, each of the width of ten feet, over or across the said intended railway and the works thereof next hereinafter mentioned (that is to say), First, one such passage or crossing over or upon the piece of land firstly described in the schedule hereto, at the northern end thereof and immediately adjoining to the station which is intended to be erected and built by the said company on land lying on the eastern side of the same piece of land, which said passage or crossing is delineated in the said plan drawn in the margin of these presents by a line coloured red [*describe in a similar manner the other crossings*]. XI. TO EXECUTE ACCOMMODATION WORKS.

5. The company shall not, by reason of the purchase by them of the said pieces of land and hereditaments described in the schedule hereto, be liable or compellable by virtue of the Railways Clauses Consolidation Act, 1845, or otherwise howsoever, to make, construct, or erect for the accommodation of the owner any works whatsoever, other than those hereinbefore agreed to be made by them. The company not compellable to make further accommodation works.

6. All the works hereinbefore agreed to be made by the company shall be executed by them and at their own cost, to the satisfaction of Mr. ——, of, &c., or other the surveyor for the time being of the owner, and shall be completed within —— months from the date of this agreement. How works to be completed.

As witness, &c.

The Schedule above referred to.

XII. AGREEMENT *as to the* Enjoyment *of* Light *on* Sufferance (*i*).

AN AGREEMENT, made the —— day of ——, 19—, Between A. B., of, &c., of the one part, and C. D., of the other part. Whereas the said A. B. has lately opened out —— windows or lights from his shop and premises in —— street, in the city of ——, which face into or overlook the back yard or grounds of a dwelling-house or tenement, whereof the said C. D. is now Introductory recital.

(*i*) Stamp, 6*d*., if not under seal. If under seal, 10*s*. If a rent is reserved it will be stamped as an agreement for a lease: see *sub tit.* "Leases," Prelim. Note. By Land Charges Act, 1925, s. 10 (1), an equitable easement is registrable as a land charge.

XII. TO PERMIT ENJOYMENT OF LIGHT ON SUFFERANCE.

possessed for an estate in fee simple absolute in possession. Now, the said A. B. hereby admits and declares that the said windows or lights hereinbefore mentioned are opened out and remain upon the leave or indulgence of the said C. D.: AND said A. B., in consideration of the said leave or indulgence hereby agrees with the said C. D. that he the said A. B. and the persons deriving title under him [*or*, his personal representatives], will at any time hereafter, upon the request in writing of the said C. D., wall or block up the said windows or lights: [AND FURTHER, that until the same shall have been so walled or blocked up, he the said A. B., will pay to the said C. D., or the persons deriving title under him, the yearly sum of £——, payable half-yearly, on the —— day of ——, and the —— day of ——, the first payment to be made on the —— day of —— next.]

IN WITNESS, &c. (*k*).

XIII. AGREEMENT *to permit the* CONTINUANCE *of* OBSTRUCTION *to* ANCIENT LIGHTS (*l*) (*m*).

Parties.

AN AGREEMENT, made the —— day of ——, 19—, BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of

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(*k*) It is generally advisable, though not absolutely necessary, that a document of this nature should be under seal, so as to bind the real estate, as well as the personal representatives and personal estate of the dominant owner, *i.e.*, the owner of the windows. See the L. P. A. 1925, s. 80. See *tit.* "Leases," Preliminary Note on Stamps. This precedent is adapted from the document which, in the case of *Bewley* v. *Atkinson*, 13 Ch. D. 283, was held to be effectual to prevent the dominant owner from acquiring any right to the access and use of light by prescription under sect. 3 of the Prescription Act (2 & 3 Will. 4, c. 71). See, too, *Greenhalgh* v. *Brindley*, [1901] 2 Ch. 324; *Smith* v. *Colbourne*, [1914] 2 Ch. 538. The agreement will be valid if signed by the dominant owner only; but it is advisable that the agreement be executed in duplicate by both parties, so as to insure, as far as possible, its coming to the notice of the successors in title of the dominant owner.

(*l*) Stamp, 6*d*., if not under seal. If under seal, 10*s*.

(*m*) As this agreement relates to an equitable easement it will require to be registered in accordance with the provisions of the Lands Charges Act, 1925, in order to protect it against a purchaser for value from an "estate owner."

the other part. WHEREAS there are two ancient window lights on the south side of the dwelling-house of the said A. B., situate at —— aforesaid, and which window lights have been totally obstructed by a dwelling-house and premises which the said C. D. has lately erected upon his lands adjoining thereto; AND WHEREAS it has been agreed between the said A. B. and C. D., for the purpose of preventing disputes between the owners and occupiers of the said two dwelling-houses, to enter into the agreement following. NOW THESE PRESENTS WITNESS as follows, that is to say, first, that the said C. D. on his part admits that the said A. B. was well entitled to the said window lights; AND, secondly, that in consideration of the said admission and declaration by the said C. D., and in further consideration of the sum of £——, paid by the said C. D. to the said A. B. (the receipt whereof the said A. B. hereby acknowledges), the said A. B. on his part agrees that the said window lights shall and may for ever remain obstructed as before mentioned: AND he hereby releases the said C. D., and those deriving title under him, from All actions, suits, claims and demands whatsoever, on account thereof.

IN WITNESS, &c.

XIII. TO PERMIT OBSTRUCTION TO ANCIENT LIGHTS.

Recital of having ancient lights, and obstruction by buildings.

To prevent disputes, admission of right to lights, and agreement to allow obstruction.

Release of all actions, &c.

XIV. AGREEMENT *between* ADJOINING OWNERS *as to* INTERFERENCE *with* ANCIENT LIGHTS *by* NEW BUILDINGS (*n*).

AN AGREEMENT (*o*), made the —— day of ——, 19—, BETWEEN A. B., of, &c., of the one part, and C. D., of, &c., of the other part. Parties.

WHEREAS the said A. B. is the owner of an estate in fee simple absolute in possession of a piece of land situate in X. Street, in the parish of ——, in the county of ——, on which certain houses recently pulled down formerly stood. Recital of A. B.'s title.

AND WHEREAS the said C. D. is the owner of an estate in fee Recital of C. D.'s title.

(*n*) The restrictive conditions contained in this agreement may require to be registered in the case of registered land in respect of both properties. See also note (*m*) on preceding page as to registration.

(*o*) Stamp, if under hand only, 6*d.*; but if under seal, 10*s.*; see *ante*, p. 41, note (*i*), and p. 42, note (*k*).

XIV. INTERFERENCE WITH ANCIENT LIGHTS.

simple absolute in possession of certain houses situate in Y. Street, in the same parish, which houses have their backs towards the said houses of the said A. B., the respective properties of the said A. B. and C. D. being separated by a dividing wall.

Proposal to erect new buildings by A. B.

AND WHEREAS the said A. B. intends to erect on the said piece of land, of which he is owner as aforesaid, buildings of a greater height than those recently pulled down, whereby (as alleged by the said C. D., though not admitted by the said A. B.) the ancient lights of the houses of the said C. D. in Y. Street will be interfered with.

Agreed plans.

AND WHEREAS plans and elevations of the said houses so pulled down, and of the new buildings so proposed to be erected as aforesaid, have been submitted to and signed by Mr. ——, the architect of the said C. D., and signed also by Mr. ——, the architect of the said A. B., and are annexed to this agreement, and are hereinafter referred to as "the said plans."

Introductory recital.

AND WHEREAS in order to settle disputes and to prevent litigation between themselves, the parties hereto have entered into the arrangement hereinafter appearing.

NOW, in consideration of the premises it is hereby mutually agreed as follows:—

A. B. not to acquire further right to light for new buildings.

1. The said A. B. shall not by reason of the erection of the proposed buildings acquire any further or more extensive right to the access and use of light to or for such buildings than he is entitled to in respect of the houses so pulled down as aforesaid, and any more extensive access or use of light to or for such new buildings than was enjoyed as of right by the buildings so pulled down shall, so far as regards the said A. B. and the persons claiming under him, be deemed to be permissive and enjoyed by consent under this agreement, and the said A. B., or the persons claiming under him, shall have no legal or equitable right, claim, or remedy against the said C. D., or persons claiming under him, for or in respect thereof.

C. D. to be permitted to erect building of equal height on his property.

2. The said C. D., or the persons claiming under him, shall be entitled if and when they shall think fit, without being liable to any action or other proceedings, or any act or hindrance on the part of the said A. B., or the persons claiming under him, to erect on the site of the said houses in Y. Street aforesaid, or any part thereof, any buildings not exceeding in height the said buildings to be erected by A. B. as shown on the said plans.

3. In consideration of the said agreements on the part of the said A. B., the said C. D. hereby authorises and consents to the erection of the said proposed buildings by the said A. B. according to the said plans.

Consent of C. D. to erection of new buildings.

4. The said A. B., and the persons claiming under him, will by inserting notice of the stipulations hereinbefore contained in favour of the said C. D., and the persons claiming under him, in leases and other muniments relating to the said property of the said A. B., and by all other reasonable means use his and their best endeavours to cause the said stipulations to run with the said property of the said A. B., and bind all persons interested therein as owners, lessees, occupiers, or otherwise (*p*).

A. B. to give notice of agreement to persons claiming under him.

In witness, &c.

(*p*) The right of access of light to a building (*Harris* v. *De Pinna*, 33 Ch. D. 238), unless enjoyed under an agreement in writing (*Easton* v. *Isted*, [1903] 1 Ch. 405), becomes indefeasible when actually enjoyed (*Cooper* v. *Straker*, 40 Ch. D. 21) without interruption (*Smith* v. *Baxter*, [1900] 2 Ch. 138; *Mallam* v. *Rose*, [1915] 2 Ch. 222) for twenty years previous to action commenced disputing the right (*Hyman* v. *Van Den Bergh*, [1908] 1 Ch. 167), and can be acquired even though the owner of the servient tenement is incapable of granting it (*Jordeson* v. *Sutton, &c. Gas Co.*, [1899] 2 Ch. 217). One of two lessees holding under the same landlord can acquire the right against the other lessee and the landlord: *Morgan* v. *Fear*, [1907] A. C. 425; *Richardson* v. *Graham*, [1908] 1 K. B. 39. To create a right of action the interference with the ancient lights must be substantial: *Colls* v. *Home and Colonial Stores, Ltd.*, [1904] A. C. 179; *Cowper* v. *Milburn*, 52 Sol. J. 316; *Ambler* v. *Gordon*, [1905] 1 K. B. 417; *Higgins* v. *Betts*, [1905] 2 Ch. 210; *Jolly* v. *Kine*, [1907] A. C. 1; *Davis* v. *Marrable*, [1913] 2 Ch. 421 (discussed and explained in *Paul* v. *Robson*, 83 L. J. C. P. 304); but it need not lower the value of the property: *Martin* v. *Price*, [1894] 1 Ch. 276. The question of "interference" depends on the identity of "light," not on the identity of "aperture": *Andrews* v. *Waite*, [1907] 2 Ch. 500; and see, as to the effect on ancient lights of rebuilding on the same or an altered site, the last-mentioned case and the cases therein cited. There can be no prescriptive right to light passing through an ordinary doorway when it is opened: *Levet* v. *Gas Light & Coke Co.*, [1919] 1 Ch. 24. As to when time begins to run in the case of an unfinished house, see *Collis* v. *Laugher*, [1894] 3 Ch. 659. As to the right to access of air, see *Chastey* v. *Ackland*, [1895] 2 Ch. 389; *Bryant* v. *Lefever*, 4 C. P. D. 172; *Harris* v. *De Pinna*, 33 Ch. D. 238; *Dalton* v. *Angus*, L. R. 6 A. C. at p. 794; *Bass* v. *Gregory*, 25 Q. B. D.

XV. APPORTIONMENT OF RENT.

XV. AGREEMENT *for* APPORTIONMENT *of* RENT (*q*).

Parties.

THIS AGREEMENT, made the —— day of ——, 19—, BETWEEN [*lessor*], of, &c. (hereinafter called "the lessor"), of the first part; [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the second part; and [*lessee*], of, &c. (hereinafter called "the lessee"), of the third part.

Recital of lease.

WHEREAS by an indenture of lease, dated the —— day of ——, and made between the lessor of the one part, and the lessee of the other part, ALL those three several messuages or tenements, with the yards, gardens, stables, and outbuildings thereto respectively belonging, situate and being Nos. 1, 2, and 3 on the west side of —— Street, in the parish of ——, in the county of —— [*add dimensions and references to plan if necessary*], with the appurtenances, were demised by the lessor to the lessee for the term of —— years, subject to the payment of the yearly rent of 90*l.* thereby reserved, and to the covenants on the lessee's part and conditions therein contained.

Recital of severance of reversion.

AND WHEREAS the said purchaser has acquired by purchase from the lessor the reversion in fee simple, expectant upon the determination of the term granted by the said indenture of lease, of No. 1, —— Street, aforesaid, with the yard, garden, stables, and outbuildings thereto.

Introductory recital.

AND WHEREAS it has been arranged between the parties hereto that the rent reserved by the said lease shall be apportioned in manner hereinafter appearing.

Agreement.

NOW IT IS HEREBY AGREED AND DECLARED between and by the said lessor and lessee for themselves respectively, and for their respective personal representatives, on the one part, and the purchaser for himself, and those deriving title under him, on the other part, That as from the —— day of ——, the said yearly rent of 90*l.* shall be apportioned as follows:—The yearly rent of 30*l.*, part of the said yearly rent of 90*l.*, shall be the portion thereof payable in respect of the messuage and premises, No. 1, —— Street, aforesaid, with the yard, gardens, stables, and outbuildings

at p. 483; *Cable* v. *Bryant*, [1908] 1 Ch. 259. As to the effect of payment of rent (1) under a parol agreement of this nature, see *Plasterers' Co.* v. *Parish Clerks' Co.*, 6 Ex. 630; and (2) under an agreement in writing, see *Bewley* v. *Atkinson*, 13 Ch. D. at pp. 293, 296. See, further, as to the benefit of covenants relating to land, L. P. A. 1925, ss. 78—80.

(*q*) This agreement should be under seal and bear a 10*s.* stamp.

thereto: AND the yearly rent of 60*l.*, remainder of the said yearly rent of 90*l.*, shall be the portion payable in respect of the residue of the premises comprised in the said lease (*r*).

IN WITNESS, &c.

XVI. DEED OF COVENANT *for the* APPORTIONMENT *of a* PERPETUAL RENTCHARGE (*to be indorsed on the* CONVEYANCE of LAND *subject thereto*).

THIS DEED (*s*), made the —— day of ——, 19—, BETWEEN the within-named [*owner of rentcharge*], of, &c., of the one part, and the within-named [*owner of land charged*], of, &c., of the other part; WITNESSETH that for apportioning the yearly rentcharge of 10*l.* mentioned in the within-written indenture, the said [*owner of rentcharge*] hereby covenants with the said [*owner of land*], and his successors, as follows:— Parties.

1. That so long as the said [*owner of land*], or his successors, for the time being entitled to the land and hereditaments described in the first part of the schedule hereto, shall duly and punctually pay the clear yearly sum of 6*l.* at the time at which the said rentcharge is payable, or within twenty-one days thereafter, as the portion of such rentcharge payable in respect of the said lands and hereditaments, then and so often as the said sum of 6*l.* shall be so paid, the said [*owner of rentcharge*], or his successors, shall not in case of the non-payment of the said rentcharge of 10*l.*, or any part thereof, make or procure to be made any distress or entry on the land described in the first part of the schedule hereto, or any part thereof, or any messuage or building thereon, or take or prosecute any actions or other proceedings against the owners, tenants, or occupiers for the time being of the said Apportionment of part of rent on land described in first part of the schedule.

(*r*) The apportionment of rent would not be binding on the lessee without his concurrence (*Bliss* v. *Collins*, 5 B. & Ald. 876), though such concurrence is often dispensed with. Sects. 140, 141, of L. P. A. 1925, contain provisions making the rent reserved by a lease and the benefit of the lessee's covenants run with the reversionary estate, notwithstanding severance of that estate. These sections, however, do not apply where a tenant holds over after the expiration of the term: cf. *Blane* v. *Francis*, [1917] 1 K. B. 257.

(*s*) Stamp, 10*s*.

XVI. APPORTIONMENT OF PERPETUAL RENTCHARGE.

land and buildings, or any part thereof, or exercise or pursue any other rights or remedies for recovering or compelling payment of the said rentcharge of 10*l.*, or any part thereof, or in anywise disturb or interrupt the said [*owner of land*], or his successors, or his or their tenants in the possession, enjoyment, or receipt of the rents and profits of the same land and hereditaments, or any part thereof.

Apportionment of the remainder of the rent on the land described in the second part of the schedule.

2. That so long as the said [*owner of land*], or his successors, for the time being entitled to the land and hereditaments described in the second part of the said schedule, shall duly and punctually pay the clear yearly sum of 4*l.* at the time at which the said rentcharge is payable, or within twenty-one days thereafter, as the portion of such rentcharge payable in respect of the said last-mentioned land and hereditaments, then and so often as the said sum of 4*l.* shall be so paid, the said [*owner of rentcharge*], or his personal representatives shall not, in case of the non-payment of the said rentcharge of 10*l.*, or any part thereof, make or procure to be made any distress or entry on such last-mentioned land and hereditaments, or any part thereof, or any messuage or building thereon, or take or prosecute any action or other proceedings against the owners, tenants, or occupiers for the time being of the said land and buildings or any part thereof, or exercise or pursue as against them, or any of them, any other rights or remedies for recovering or compelling payment of the said rentcharge of 10*l.*, or any part thereof, or in anywise disturb or interrupt the said [*owner of land*], his successors, or his or their tenants in the possession, enjoyment, or receipt of the rents and profits of the same land and hereditaments, or any part thereof.

Covenant by owner of rentcharge to indemnify owner of land.

3. And that he the said [*owner of rentcharge*], his personal representatives, will at all times keep the said [*owner of land*], his successors, and the tenants of the respective lands and buildings described in the 1st and 2nd parts of the said Schedule indemnified against all losses, damages, costs and expenses by reason of any distress or entry being made or any other proceedings being taken to recover or compel payment of the said rentcharge of 10*l.*, or any part thereof, contrary to the covenants hereinbefore contained or either of them (*t*).

IN WITNESS, &c.

(*t*) The apportionment can be made by the Board of Agriculture and

XVII. FAMILY AGREEMENT, *to give effect to an* INTENDED WILL *which has not been duly Executed* (*u*).

XVII. INTENDED WILL NOT DULY EXECUTED.

A DEED OF FAMILY ARRANGEMENT, made the —— day of ——, 19—, BETWEEN Alfred Jones, of, &c., of the first part; Charles Jones, of, &c., of the second part; Elizabeth Fisher, the wife of John Fisher, of, &c., of the third part; and Clara Jones, of, &c., spinster, of the fourth part. Parties.

Recitals:

WHEREAS John Jones, late of, &c., who died on the —— day of ——, shortly before his death instructed his solicitors to prepare for him his will, a draft of which was prepared, but such intended will was never executed by the said John Jones. Death, and non-execution of intended will.

AND WHEREAS the said John Jones died intestate, and a widower, leaving the said Alfred Jones, his eldest son and heir-at-law, and the said Alfred Jones, Charles Jones, Elizabeth Fisher, and Clara Jones, his only surviving children and sole next of kin. Family.

AND WHEREAS the said parties hereto are satisfied that the draft which has, for the purpose of identification, been signed Desire of parties to carry out

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Fisheries on the application of the parties interested in the land and the rentcharge under the Enclosure Act, 1854, ss. 10—12, 14. Prior to the Law of Property Amendment Act, 1859, the release of part of the land charged with a rentcharge operated as a release of the whole land. The effect of sect. 70 of the L. P. A. 1925, is that where the owner of the rentcharge releases a portion of the land charged without the concurrence of the owner of the other portion the rentcharge is not extinguished, but only a proportionate part of the rentcharge can be recovered against the owner of the unreleased portion (*Booth* v. *Smith*, 14 Q. B. D. 318), unless he concurs in the release (*Price* v. *John*, [1905] 1 Ch. 744). As to apportionment between several owners of a rentcharge without the consent of the owners of the land, see *Rivis* v. *Watson*, 5 M. & W. 255. As to the remedies for recovering rentcharges, see L. P. A. 1925, s. 121. A rentcharge is a rent within sect. 1 of the Real Property Limitation Act, 1874: *Shaw* v. *Crompton*, [1910] 2 K. B. 370.

(*u*) Stamp, 10*s*. This agreement should be under seal. See, as to family arrangements, White & Tudor, L. C., notes to *Stapilton* v. *Stapilton*. After December 31st, 1925, a married woman's statutorily authorised disposition is good without her acknowledgment (a) if made with her husband's concurrence, (b) if made without his concurrence where the Court, under statutory power, has made an order dispensing therewith: see L. P. A. 1925, s. 167.

XVII. INTENDED WILL NOT DULY EXECUTED.

by them contained the intended testamentary dispositions of their father the said John Jones, and they are desirous of fulfilling their father's intentions as expressed in the said draft.

intentions expressed in draft will.

NOW THIS DEED WITNESSETH, that in consideration of the premises and in order to avoid questions and disputes as to application and division of the real and personal estate of the said John Jones, IT IS HEREBY AGREED AND DECLARED, and the parties hereto do hereby mutually covenant as follows:—

Agreement.

Division of property.

1. All the real and personal property of the said John Jones, including any property which he had power to appoint by will in favour of the parties hereto, or any of them, shall be administered, divided and dealt with in accordance with the terms and dispositions expressed and contained in the said draft which has been signed by the parties hereto as aforesaid [and a copy of which is set out in the schedule hereto] (*x*).

Execution of deeds to carry out agreement.

2. Each of them the respective parties hereto, and their respective personal representatives, shall execute all such deeds and documents, and do all such acts as may be necessary or expedient in order to carry out this agreement and give full effect thereto.

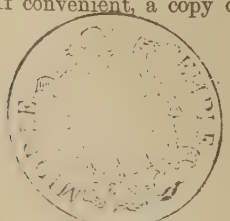
No proceedings to enforce claims under intestacy.

3. Except for the purpose of enforcing this agreement or any of the terms thereof, no party hereto shall, as being or representing the next of kin of the said John Jones, or as claiming in default of appointment under any will or settlement giving the said John Jones any such special powers of appointment as aforesaid, or in any other character, take any action or other proceedings against any other party or parties hereto, or the executors or trustees of any such will or settlement, or any of them, in respect of or reference to any part of the real or personal estate of the said John Jones, or the trust property over which such power of appointment may have been given as aforesaid.

Administration to be taken out.

4. Letters of administration to the real and personal estate and effects of the said John Jones shall be taken out by the said Alfred Jones, who shall administer and deal with such estate and effects in all respects as if the said John Jones had duly executed the said draft as and for his last will and testament, and letters of administration with the said will annexed had been granted to the said Alfred Jones.

(*x*) If convenient, a copy of the draft may be set out in a schedule.



5. The costs of and incidental to the preparation, stamping (*y*) and execution of this agreement, and of all documents necessary or expedient for giving effect thereto, shall be deemed to be expenses attending the execution of the trusts and purposes declared and contained in the said draft. Costs.

XVII. INTENDED WILL NOT DULY EXECUTED.

IN WITNESS, &c.

XVIII. AGREEMENT *for the* PURCHASE *of the sole* RIGHT *of Compounding and Vending a* MEDICINE, *in consideration of a* MOIETY *of the* PROFITS *to be paid during* TWELVE YEARS (*z*).

ARTICLES OF AGREEMENT, made this —— day of ——, BETWEEN [*proprietor*], of, &c. (hereinafter called "the proprietor"), of the one part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREBY IT IS AGREED as follows:— Parties.

1. The proprietor, for the considerations hereinafter mentioned, hereby assigns unto the purchaser all and singular the right and interest of him the proprietor, of and in certain medicines or preparations called respectively ——, whereof the proprietor is the sole proprietor and owner. Sale of interest in medicines.

2. The proprietor shall in a certain paper writing under his own hand, and bearing even date herewith, set forth full, true and perfect recipes for the making up or compounding the aforesaid medicines or preparations respectively. Proprietor to disclose secret by writing of even date.

3. The proprietor shall not at any time hereafter disclose or make known to any person or persons whomsoever the recipes whereby the said medicines or preparations, or any of them, may be compounded or made up. Not to disclose secret to other persons.

4. The proprietor shall not at any time hereafter, either by himself or by an agent or otherwise, make up or compound the aforesaid medicines or preparations, or any other of the same description, And shall not permit or allow the same or any of Not to compound medicines.

(*y*) Any conveyances or transfers required for carrying this agreement into effect would be voluntary dispositions, as to the stamping of which, see Finance Act, 1920, s. 36 (2).

(*z*) This agreement should be under seal and bear a 10*s*. stamp.

XVIII. SOLE RIGHT OF COMPOUNDING AND VENDING A MEDICINE, &c.

them to be made up or compounded by any person or persons whomsoever, under or by virtue of any licence or authority by him the proprietor heretofore given or granted, or by him to be hereafter given or granted.

Purchasers to pay a moiety of profits to proprietor for a term.

5. In consideration of the premises the purchaser shall pay to the proprietor annually one moiety of the net profits arising from the sale of the aforesaid medicines or preparations during the term of twelve years, after which term the purchaser shall be entitled to hold the proprietorship of the said medicines and preparations without account.

To render account annually.

6. The purchaser shall, during the said term of twelve years, render to the proprietors annually, on the —— day of ——, a statement and account of the sale of the said aforesaid medicines or preparations, together with the cost of preparing the same, and the cost of advertising and putting on the market the same, whereby the net profit arising from the sale of the medicines or preparations may be ascertained.

As to expenses of advertising.

7. The expense of advertising and putting on the market the said medicines or preparations during the said term shall not be greater or otherwise than the sum to be agreed on between the purchaser and the proprietor by a memorandum in writing.

Proprietor's share of profits to be paid within fifteen days after rendering account.

8. Within fifteen days after rendering the account mentioned in the sixth article, the purchaser shall pay to the proprietor the share or proportion of the net profit due to him on the said account.

Purchaser not to verify accounts.

9. The proprietor shall not be entitled to call upon the purchaser to produce books in order to verify or prove the accounts to be rendered by him in pursuance of the sixth article, but the purchaser shall, if so required by the proprietor, verify the same by statutory declaration, and the accounts so rendered shall be taken and held to be correct.

In witness, &c.

XIX. AGREEMENT *for the* SALE *of a* CHATTEL *on the* THREE YEARS' HIRE SYSTEM. *In case of* DEFAULT, *all* INSTALMENTS *paid to be* FORFEITED (*a*).

THE undersigned hereby hires the —— pianoforte, Class ——, No. ——, belonging to Messrs. —— & Co., of, &c., upon the terms and conditions following:—

1. On the sum of £—— being paid to Messrs. —— & Co., in —— instalments of £—— each, the first instalment to be paid on the —— day of —— next, and each subsequent instalment at the expiration of each succeeding three months, the pianoforte to belong without further payment to the undersigned.

2. The hirer may at any time terminate the hiring by delivering up the said [*chattel*] at the hirer's own risk to the owner at his address, without prejudice to any claim the owner may have against the hirer for any damage to the said [*chattel*], or for any unpaid instalment or instalments then due and owing, or to become due and owing, at the end of the then current month for which an instalment would be due.

3. The hirer will keep the said [*chattel*] in his own possession at the premises described as his above mentioned address, and will punctually pay the rent, rates and taxes of such premises, and will, when demanded in writing or otherwise, forthwith produce to the owner or his agent the receipt for the last payment

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(*a*) Stamp, 6*d*., if under hand only; 10*s*. if under seal: see Finance Act, 1907, s. 7. The custom of letting out pianos on the hire-purchase system has been fully established so as to exclude the doctrine of reputed ownership: see *Ex parte Hattersley,* 8 Ch. D. 601; and pianos so let are protected from distress under the Law of Distress Amendment Act, 1908 (8 Edw. 7, c. 53), by sect. 4, which excludes the application of the Act to goods comprised in a hire-purchase agreement: see *Shenstone & Co.* v. *Freeman,* [1910] 2 K. B. 84; *Rogers, Eungblut & Co.* v. *Martin,* [1911] 1 K. B. 19. As to furniture in the possession of hotel keepers, see *Ex parte Crawcour* (C. A.), 9 Ch. D. 419; *Crawcour* v. *Salter,* 18 Ch. D. 30. The agreement does not require to be registered as a bill of sale: *Ex parte Crawcour, ubi sup.* When what purports to be a hire purchase agreement is in fact a colourable transaction or device for securing a loan, it comes within the Bills of Sales Acts, and is void if not made in the form in the schedule to the Act of 1882: see *Beckett* v. *Tower Assets Co.,* [1891] 1 Q. B. 638; *Maas* v. *Pepper,* [1905] A. C. 102; *Johnson* v. *Rees,* 84 L. J. K. B. 1276.

XIX. SALE OF CHATTEL.

due in respect of such rent, rates and taxes respectively, and will permit the owner and his agents to enter such premises at all reasonable times to inspect the said [*chattel*], and will not create or allow to be acquired any lien on the said [*chattel*], and will maintain the same in good and substantial order and repair, and in the event of destruction or damage by fire or other causes, will indemnify the owner against all loss.

4. If the hirer shall not observe and perform the foregoing terms or any of them, or if he becomes bankrupt, or executes an assignment for the benefit of his creditors, or if an execution or distress be levied or be threatened to be levied upon the said [*chattel*], the owner may by notice terminate the hiring, and thereupon the hirer shall forthwith deliver up the said [*chattel*] at his own risk and cost to the owners at the owners' address, and in default of such delivery the owner, his agents and servants shall have full right and liberty to enter the premises where the said [*chattel*] may be and (with the right to exercise the powers of a distraining landlord) to retake possession of the said [*chattel*], and in any event the owner may recover from the hirer all arrears of hire, rent and damages, and all costs, charges and expenses incurred (if any) in tracing and obtaining possession of the said [*chattel*].

5. If the hiring determines under clause 4 of this agreement, and if at the date of such determination the hirer (being the tenant of the premises in which the said [*chattel*] shall then be placed) shall not immediately deliver up the said [*chattel*] to the owner, or permit the owner to retake possession of the same without molestation or interruption, the owner may by notice put an end to this agreement, and thereby cancel and make void all the provisions hereof.

6. Any notice required to be given by the owner under this agreement, if verbal, may be communicated to the hirer or any other person at the premises in which the said [*chattel*] shall then be placed, or to the hirer elsewhere, or if in writing, may be served upon the hirer personally or left at the last known place of abode or business of the hirer, or affixed or left on the said premises, or sent by post addressed to the hirer at the aforesaid place of abode or business of the hirer, or at the said premises. Any notice required to be given by the hirer under this agreement

shall be in writing and sent by registered letter to the address for the time being [*or*, registered office] of the owner.

7. All original rights and powers of the owner under this agreement shall remain in full force, notwithstanding any neglect, forbearance or delay in the enforcement thereof.

As witness, &c. (*b*).

APPOINTMENTS.

PRELIMINARY NOTE.

As to stamps.

By sect. 62 of the Stamp Act, 1891, every instrument whereby property (except on sale or mortgage) is transferred to or vested in any person is to be charged with duty as a conveyance or transfer of property, with a proviso that a conveyance or transfer on the appointment of a new trustee is not to be charged with more than 10*s*. By the schedule to the Act a duty of 10*s*. is imposed on every "conveyance or transfer" not thereinbefore described, and under the *tit.* "Appointment" in the same schedule the duty on an "appointment in execution of a power of any property, or of any use, share, or interest in any property by any instrument not being a will" is to be 10*s*. Under the head of "Settlement" there is an exemption from the *ad valorem* settlement duty of instruments of appointment in favour of special objects of the power where duty has been duly paid on the settlement. The duty, therefore, on appointments under special powers appears to be 10*s*. It would seem that appointments under "general powers" operate as a voluntary disposition *inter vivos*, and are chargeable under sect. 36 (2) of the Finance Act, 1920, with the like duty as a conveyance on sale—substituting the value of the property for the amount of the consideration. In the case of special appointments the "disposition" has been previously made by the settlor, and the appointment operates only

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(*b*) Other useful forms of hire purchase agreements will be found in "The Conveyancer," vol. 2, pp. 39 *et seq.*

by way of selection of the objects of the power. The question of stamps on deeds of appointment is a difficult one, and it would be as well in all cases of appointments under a general power to have the stamp adjudicated. The stamp on a revocation in writing, otherwise than by will, of any use or trust, is 10*s*. See Sched. to Stamp Act, 1891, *tit.* "Revocation."

As to appointments under special powers.

By the statute 37 & 38 Vict. c. 37, s. 1, it is enacted that no appointment made after the Act under a power to appoint amongst several objects shall be invalid on the ground that any object has been altogether excluded, thus extending the Illusory Appointments Act, 1830, which allowed a nominal share to be appointed to objects of the power.

In exercising special powers of appointment the following points should be remembered:—

Execution.

First, as to execution, care should be taken to observe the requirements of the instrument creating the power; but as to appointments by will see sect. 10 of the Wills Act, 1837, and as to appointments by deed, 22 & 23 Vict. c. 35, s. 12. See also *Barretto* v. *Young*, [1900] 2 Ch. 339, and the cases there cited; and *Re Barnett*, [1908] 1 Ch. 402; *Re Wilkinson's Settlement*, [1917] 1 Ch. 620; and *In re Lewal's Settlement Trusts*, [1918] 2 Ch. 391.

Perpetuities.

Secondly, in framing the deed, any infringement of the rule against perpetuities should be carefully avoided. See *Re Warren*, 26 Ch. D. 208; *Re Gage*, [1898] 1 Ch. 498; *Re Thompson*, [1906] 2 Ch. 199. The effect on this of the Law of Property Act, 1925, s. 163, should be considered.

Objects of power.

Thirdly, only persons who are objects of the power can be included in the appointment; thus, under a power to appoint to children an appointment cannot be made to the issue of a child: *Brudenell* v. *Elwes*, 1 East, 422; or to the child's representatives: *Maddison* v. *Andrew*, 1 Ves. Sen. 382.

Fraud on powers.

Fourthly, the doctrine with respect to frauds on powers (see *Tharp* v. *Tharp*, [1916] 1 Ch. 142, and notes to *Aleyn* v. *Belchier*, White & Tud. L. C.) must be kept in mind; and Fifthly, a special power is fiduciary, and cannot be delegated. See as to this, *Ingram* v. *Ingram*, 2 Atk. 88; *Williamson* v. *Farwell*, 35 Ch. D. 128; *Re Joicey*, [1915] 2 Ch. 115.

Other points.

Any dealing with the property by the donee of the power inconsistent with the future exercise of the power, releases it:

see *Foakes* v. *Jackson*, [1900] 1 Ch. 807; and conf. *Lonsdale* (*Earl of*) v. *Lowther*, [1900] 2 Ch. 687.

A power of revocation reserved by an appointment is not necessarily exercised by a subsequent appointment without revocation under the original power and "every other power": *Re Thursby*, [1910] 2 Ch. 181.

The donee of a special power cannot substitute other trustees for those of the settlements creating the power contrary to the donor's intention (*Re Tyssen*, [1894] 1 Ch. 56; *Re Paget*, [1898] 1 Ch. 286; *Re Purdie*, 48 Sol. J. 524; *Re Mackenzie*, [1916] 1 Ch. 125 and [1917] 2 Ch. 58), but under a power to appoint land the donee may appoint trustees to sell and divide the proceeds: *Kenworthy* v. *Bate*, 6 Ves. 793; *Re Paget*, [1898] 1 Ch. 290; *Adams' Trustees and Frost*, [1907] 1 Ch. 695.

As to rescission of appointments on the ground of mistake, see *Hood* v. *Mackinnon*, [1909] 1 Ch. 476; and generally as to the law with respect to powers of appointment see Farwell on Powers. As to releases of powers, see Releases.

PRECEDENTS.

I. APPOINTMENT *of* FREEHOLDS *under a* GENERAL POWER *in a* WILL, *subject to the* ESTATES *for* LIFE *of the* APPOINTOR, *and his* WIFE (*c*).

A DEED OF APPOINTMENT, made the —— day of ——, by, &c.

Recital of will creating the power (*d*).

WHEREAS under or by virtue of the will of [*testator*], of, &c., deceased, dated the —— day of ——, and proved on the —— day of ——, in the Principal Probate Registry of the High Court

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(*c*) This appointment being made under a general power, and, therefore, operating as a disposition *inter vivos*, will require to be stamped

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(*d*) Where a deed of appointment conveys an estate in fee or any lesser estate in land, or otherwise affects the title to land, the instrument creating the power, and other subsequent circumstances affecting the property, should be recited, so as hereafter to render the appointment capable of being conveniently made a root of title. In other cases appointments may sometimes be made by indorsement or by supplemental deed.

Recitals.

I. FREEHOLDS UNDER GENERAL POWER.

of Justice, the proceeds of sale of divers estates and hereditaments situate at——, stood limited to the use of the said [*appointor*] and of [*wife*], his wife, successively during their respective lives, with remainder to such uses as the said [*appointor*] should by deed or will appoint, with remainders over as in the said will is mentioned.

Appointment in pursuance of a power.

Parcels.

NOW THIS DEED WITNESSETH, that the said [*appointor*], in exercise of the power reserved to him by the said will, and of all other powers enabling him in this behalf, hereby appoints that ALL THAT messuage, &c., situate, &c., being part of the hereditaments by the said will made subject to the appointment of the said [*appointor*], with their appurtenances, shall henceforth go, remain, and be to the said [*appointee*], absolutely; Subject nevertheless, and without prejudice to the several estates for life of the said [*appointor*] and [*wife*], his wife, in the estates and hereditaments hereby appointed.

To appointee absolutely (*e*).

[*Appointment by appointor to himself in remainder*] "shall, subject nevertheless, &c., go, remain, and be to the said [*appointee*] for life and after his death to the said [*appointor*] absolutely."

IN WITNESS, &c.

II. POST-NUPTIAL APPOINTMENT *of a* JOINTURE *under a* POWER *contained in a* STRICT SETTLEMENT (*with* VARIATIONS *for* ANTE-NUPTIAL APPOINTMENT).

A DEED OF APPOINTMENT (*f*), made the —— day of ——, 19—, BETWEEN [*appointor*], *of*, &c. (hereinafter called "the

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in accordance with sect. 36 (2) of the Finance Act, 1920, with an *ad valorem* stamp as on a sale: see Preliminary Note, *ante*, p. 55. Notice of this deed should be given to the trustees of the will if the legal estate is in them.

Appointment a limitation upon trusts.

(*e*) An appointment is merely a right to limit upon trusts. The appointment must, therefore, be made in trust for the person intended to take directly. If the legal estate is in trustees the recital of the will will be varied accordingly, and the appointor will appoint that the hereditaments "shall henceforth be held IN TRUST for the said [*appointee*].

(*f*) Stamp, 10*s.*; but see Preliminary Note, *ante*, p. 55.

appointor "), of the one part, and [*wife or intended wife*], of, &c. (hereinafter called "the jointress"), of the other part.

Recitals of settlement creating power.

WHEREAS under and by virtue of an indenture of settlement, dated the —— day of ——, and made between [*parties*], it was provided that the appointor, either before or after he should become entitled to the receipt of the rents and profits of the hereditaments thereby settled, but subject and without prejudice to the uses and estates prior to, and powers overreaching the estate of the appointor, and to the uses and estates limited or created in exercise of such powers at any time, either before or after his marriage with any woman, might, by deed revocable or irrevocable, or by will or codicil, appoint to such woman, in the event of her surviving him, for her life or any less period, a rentcharge or rentcharges by way of jointure not exceeding, during the life of [*appointor's father*], the sum of £——, and after his death the annual sum of £—— and to be charged upon all or any of the hereditaments thereby settled, and to be payable without any deduction at such times and in such manner as the said appointor should direct.

Death of appointor's father.

AND WHEREAS the said [*appointor's father*] died on the —— day of ——.

Marriage of appointor and appointee (*g*).

AND WHEREAS on the —— day of —— a marriage was duly solemnized between the appointor and the jointress, his present wife, then [*maiden name*], spinster.

Desire to appoint.

AND WHEREAS the appointor is desirous of making such provision by way of jointure for his said wife in the event of her surviving him as is hereinafter contained:—

Appointment.

NOW THIS DEED WITNESSETH, that, in pursuance of the said agreement [and in consideration of the said intended marriage], the appointor, in exercise of the power reserved to him by the said recited indenture, and of every other power

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(*g*) In the case of an ante-nuptial appointment this and the next recital should be omitted and in lieu thereof the following recital should be inserted:—

"WHEREAS a marriage is intended shortly to be solemnized between the appointor and the jointress, and upon the treaty for the said intended marriage it was agreed that the appointor should make such appointment as is hereinafter contained."

II. JOINTURE UNDER POWER.

in anywise enabling him in this behalf, hereby grants and appoints unto the jointress during her life [*or*, during widowhood] in case [the said intended marriage shall be solemnized and] she shall survive him, the annual sum or yearly rentcharge of £——, to be issuing out of, and charged upon ALL AND SINGULAR the manors and hereditaments comprised in the said recited indenture (*h*), such rentcharge to be for the jointure of the jointress, and in bar of all freebench (*i*), and to be paid to her by equal half-yearly payments on the —— day of —— and the —— day of —— in every year [during her widowhood], without any deduction (*j*); the first half-yearly payment thereof to be made on such of the said days as shall first happen after the decease of the appointor.

PROVIDED ALWAYS (*k*), that nothing herein contained shall prevent the appointor from granting or appointing any further rentcharge or rentcharges under the power of jointuring for that purpose reserved by the said recited indenture or any such other power as aforesaid.

IN WITNESS, &c. (*l*).

(*h*) *Or* (if not charged on all the settled estate),

"all and singular the messuages, farms, lands, and hereditaments, situate, &c., ——, and known as, &c., ——, being part of the manors and hereditaments comprised in the said recited indenture."

(*i*) By A. E. A. 1925, s. 45, freebench is abolished, provided that where, before January 1st, 1925, any right to it has attached which cannot be barred by a husband's testamentary or other disposition, such right, unless released by the wife, will after that date continue as an equitable interest.

(*j*) As to these words, see *Re Parker-Jervis*, [1898] 2 Ch. 643. As to whether the jointure can be granted free from death duties depends on the terms of the power.

(*k*) Whenever the husband does not exercise his power to the full extent it is prudent to add a similar proviso to the above.

(*l*) The statutory remedies for recovering rentcharges given by L. P. A. 1925, s. 121, will apply to the jointure rentcharge whether the settlement was before or after the Act.

III. APPOINTMENT *by a* FATHER *of a* PORTION *secured by a* TERM *to a* DAUGHTER *on her* MARRIAGE, *under a* POWER *contained in a* STRICT SETTLEMENT *of the* FAMILY ESTATES (*by* SUPPLEMENTAL DEED) (*m*).

III. OF PORTION, &C.

A DEED OF APPOINTMENT, made the, &c. WHEREAS this deed is intended to be supplemental to an indenture of settlement, dated, &c., and expressed to be made between, &c. [*parties*] hereinafter called "the principal indenture").

Recitals of state of family;

AND WHEREAS there have been issue (other than an eldest son) of the appointor by [*wife*], his wife, three sons and two daughters, that is to say, A. F., who attained the age of twenty-one years, and is since deceased, B. F., who died an infant, C. F. [*former appointee*], who has attained the age of twenty-one years, and is now the wife of M. N., D. F. [*present appointee*], who has attained the age of twenty-one years, and E. F., now an infant of the age of —— years, or thereabouts:

of previous appointment of a portion;

AND WHEREAS by a deed poll under the hand and seal of the appointor, dated, &c., and made supplemental to the said principal settlement, the appointor, in pursuance of the power reserved to him by the same indenture, appointed the sum of £——, part of the sum of £——, thereby authorised to be raised for the portions of his daughters and younger sons (if three or more), as therein is mentioned, unto the said [*former appointee, married name*], then [*maiden name*], as her portion, in case her then intended marriage with the said [*her husband*] should be solemnised or take place: AND directed the same to be raised and paid immediately upon the solemnisation thereof, which shortly afterwards took place, and the said sum of £—— was accordingly afterwards raised by a mortgage of part of the estates comprised in the said settlement, and paid by the direction of the said [*former appointee*] and [*her husband*], to [*trustee*] and [*trustee*] as the trustees of her marriage settlement:

intended marriage of appointee.

AND WHEREAS a marriage is intended to be shortly solemnised between the said [*appointee*] and [*intended husband*], of, &c.:

AND WHEREAS the appointor is desirous of appointing the sum of £—— further part of the said sum of £—— so authorised to be

(*m*) Stamp, 10*s.*: see Preliminary Note, *ante*, p. 55. Notice of this deed must be given to the trustees of the settlement.

III. OF PORTION, &c.

raised as aforesaid, unto the said [*present appointee*], to be paid immediately upon the solemnisation of the said intended marriage in manner hereinafter appearing.

Testatum.

NOW THIS DEED WITNESSETH as follows:—

1. In consideration of the said intended marriage, and in exercise of the power reserved to him by the said principal settlement, and of all other powers (if any) enabling him in that behalf, He, the appointor, hereby appoints the sum of £——, further part of the said sum of £——, by the same principal settlement authorised to be raised for the portions of his daughters and younger sons as aforesaid, unto the said [*appointee*], as and for her marriage portion or fortune, in case the said intended marriage shall take place (*n*).

Appointment of the portion, in case the marriage should take effect.

Proviso, that appointment is not to prevent a further appointment to appointee, &c.

2. PROVIDED ALWAYS, and the appointor declares that the appointment hereby made is not intended by him to prevent him from hereafter appointing any part or share of the residue of the said sum of £—— to her the said [*appointee*], in case he should think proper so to do, or to prevent her from hereafter having or taking under and by virtue of the trusts of the said principal indenture (*o*) any part or share of the residue of the said sum of £——, in case he the appointor should not hereafter make any appointment of or concerning the same, or from having or taking (*p*) any part or share of so much of the said residue as shall or may ultimately remain unappointed by him the appointor: Save only and except that the said [*appointee*] shall not in (*q*) any event here-

Hotchpot clause.

(*n*) Express authority, to the surviving trustee of a portions term, forthwith to raise the portion by mortgage, is made needless by the statutory power in that behalf contained in sect. 39 of the A. of E. A. 1925.

LARGER APPOINTMENT THAN A DISTRIBUTIVE SHARE, WHERE THERE IS AN INFANT.

(*o*) If the sum appointed be larger than the appointee's distributive share would have been, in case there had been no appointment, say 1,200*l.*, there being, for instance, 3,000*l.* and three objects, one of them not having gained a vested interest in her share in default of appointment; then, provided it be the intention of the appointor, add,

"in the event of the death of her sister, the aforesaid [*infant*], without having acquired a vested interest therein, any part," &c., *ut supra,*

and make the variations contained in notes (*p*), (*q*), and (*r*), *infra.*

(*p*) "in the same event, any part," &c., *ut supra.*

(*q*) "such event, except by," *ut supra.*

after, unless by the appointment of the appointor, have or take any further or greater part of the said residue of the said sum of £—— than will, with the said sum of £—— hereby appointed to her as aforesaid, make up what would (*r*) have been the full part or share of her the said [*appointee*] under or by virtue of the trusts of the said principal indenture of and in the said sum of £——, in case he the appointor had not made any appointment whatsoever of or concerning the same or any part thereof (*s*). III. OF PORTION, &c.

3. PROVIDED ALWAYS, that the appointment hereby expressed to be made shall be void if the said intended marriage shall not take place within twelve calendar months from the date of these presents (*t*). Proviso.

IN WITNESS, &c.

IV. POST-NUPTIAL APPOINTMENT *by a* MARRIED WOMAN *of a* LIFE INTEREST *in* PERSONALTY *to her* HUSBAND *under a* POWER *in a* WILL. VARIATIONS *where a* DETERMINABLE LIFE INTEREST *is given, and where the* APPOINTMENT *is* REVOCABLE *and for an* ANTE-NUPTIAL APPOINTMENT (*u*).

THIS DEED OF APPOINTMENT, made by [*appointor*] the wife of [*husband*] of ——.

WHEREAS [*testator*], late of ——, deceased, by his will, Recitals:

(*r*) "in the same event have been," &c., *ut supra*.

(*s*) The hotchpot clause will not be necessary if a similar clause is contained in the instrument creating the power. If the appointment be larger than the distributive share in default of appointment and there is an infant, provided it be the intention, add, Larger appointment than distributive share.

"But in the event of the said [*infant*] living to acquire a vested interest in the said residue of the said sum of £——, subject to the appointor's power of appointment, the said [*appointee*] is not to have or take any part or share of the said residue, in case the appointor should not make any appointment of or concerning the same, or to have or take any part or share of so much of the said residue as shall or may ultimately remain unappointed by him."

(*t*) This proviso is necessary in order to avoid infringing the rule against perpetuities.

(*u*) Stamp, 10*s*.: see Preliminary Note, *ante*, p. 55.

IV. BY MARRIED WOMAN, &c.

Will containing power of appointment.

dated, &c., and duly proved in the Registry on the —— day of ——, by all the executors named therein, after making certain specific and pecuniary bequests, devised and bequeathed the residue of his real and personal estate to trustees upon trust for sale and conversion as therein mentioned, and after payment of the testator's funeral and testamentary expenses, debts and legacies, to invest the net residue of the proceeds of such sale and conversion as therein mentioned: AND upon further trust to pay the income of the testator's residuary estate and the investments representing the same (hereinafter called "the said trust estate") to the said [*appointor*] during her life, and after her death to hold as well the capital as the income of the said trust estate upon the trusts therein mentioned, power being reserved thereby to the said [*appointor*], by deed or will, to appoint from and after her decease the whole or such part as she should think fit of the annual income of the said trust estate for the benefit of any husband she might leave her surviving during his life or for any less period and subject to any restrictions she might think proper.

[For post-nuptial appointment only.] Desire to appoint.

AND WHEREAS the said [*appointor*] is desirous of exercising the power by the said will reserved to her, as aforesaid, in manner (and subject as) hereinafter expressed.

[For ante-nuptial appointment only.] Intended marriage and agreement to appoint.

[AND WHEREAS a marriage is intended shortly to be solemnized between the said [*appointor*] and [*husband*], and upon the treaty for the said intended marriage it was agreed that the said [*appointor*] should make such appointment as is hereinafter contained.]

Appointment to husband for life.

NOW THIS DEED WITNESSETH that [in consideration of the said intended marriage and] in exercise of the power for this purpose given to her by the said will, as aforesaid, and of every other power enabling her in this behalf, the said [*appointor*] doth hereby appoint that [if the said intended marriage shall be solemnized within —— months from the date hereof, then] from and after her death, if the said [*husband*] shall survive her, the whole of the income of the said trust estate shall be paid to the said [*husband*], during his life [*or*, for the benefit of the said [*husband*] upon protective trusts] (*x*).

(*x*) Under sect. 33 (1) of the Trustee Act, 1925, any income, including an annuity, may be directed to be held on protective trusts, which are in fact the equivalent of protected life interests, and, by sect. 32 (1) of the same Act, are subject to the discretion of the trustees.

IV. BY MARRIED WOMAN, &c.

[PROVIDED ALWAYS, and it is hereby declared, that it shall be lawful for the said [*appointor*] at any time hereafter by deed, wholly or partially, to revoke the appointment hereinbefore contained].

Power of revocation.

IN WITNESS, &c. (*y*).

V. APPOINTMENT *by* COMMITTEE *of a* LUNATIC *to a* DAUGHTER *of* LUNATIC *on her* MARRIAGE *of a* SHARE *of* TRUST FUNDS *under a* POWER *vested in* LUNATIC *under a* WILL. VARIATION *where the* LUNATIC *is not so found by* INQUISITION (*z*) (*a*) (*b*).

A DEED OF APPOINTMENT by [*committee*], of, &c., committee of the estate of [*lunatic*], of, &c., a lunatic [*or, if not so found by inquisition,* [*lunatic*], of, &c., a person of unsound mind not so found by inquisition, acting by [*committee*], of, &c., as the person appointed to exercise the powers of a committee of his estate].

Recitals: of will creating the power;

WHEREAS [*testator*], of, &c., deceased, duly made his will, dated, &c., and thereby, after bequeathing certain specific and pecuniary legacies therein mentioned, gave and bequeathed the residue of his personal estate to [*trustees*] in trust for the said [*lunatic*] during his life, and from and after his decease in trust for the child or children of the said [*lunatic*] as he should by deed or will appoint, and in default of such appointment upon the trusts therein mentioned or referred to, and the said [*testator*] by his said will appointed the said [*trustees*] the executors thereof.

(*y*) Notice of this deed should be given to the trustees of the will.

(*z*) Stamp, 10*s.*: see Preliminary Note, *ante*, p. 55.

(*a*) A special power of appointment among children may be exercised on behalf of a lunatic donee of the power whether so found or not (*Re A.*, [1904] 2 Ch. 328), by a person appointed under the Lunacy Act, 1890, s. 116, with the authority of a judge (sect. 128) or Master (under the Lunacy Act, 1908, s. 1). As to a person detained under the Mental Deficiency Act, 1913, see sects. 2, 11, and 67 of that Act; and see *Re Whalley*, [1906] 1 Ch. 565.

(*b*) This precedent can easily be adapted for the case of a donee exercising the power personally by deleting all references to the lunacy and proceedings with regard thereto.

V. BY COMMITTEE OF LUNATIC, &c.

of death of testator; of probate of his will;

AND WHEREAS the said [*testator*] died on the —— day of ——, 19—, and his said will was duly proved on the —— day of ——, 19—, by the said executors in the Principal Probate Registry.

AND WHEREAS the residuary personal estate of the said [*testator*] is now represented by the several stocks, funds, and securities specified in the schedule hereto.

of state of family;

AND WHEREAS there have been four children of the said [*lunatic*], all of whom are now living, but one only, namely, [*appointee*] has attained the age of twenty-one years.

of order appointing committee;

AND WHEREAS by an Order in Lunacy, dated, &c., in the matter of, &c., upon an application before Mr. Justice ——, the said [*committee*] was appointed to be the committee of the estate of the said [*lunatic*] [the said A. was appointed to exercise the powers of a committee of the estate of the said [*lunatic*], a person of unsound mind not so found by inquisition].

of order directing appointment.

AND WHEREAS by an Order of Mr. Justice ——, made on the —— day of ——, upon an application in the said matter, it was ordered that the said [*committee*], as committee of the estate of the said [*lunatic*] [the said A., as the person so appointed as aforesaid], should exercise the power of appointment given to the said [*lunatic*] by the said will in manner hereinafter appearing.

Master's approval;

AND WHEREAS Master ——, the Master in Lunacy (*c*) [*or*, the Assistant Master in Lunacy], has settled and approved of these presents as a proper appointment pursuant to the said last-mentioned Order, and in testimony of such approval the seal of the said Master has been affixed in the margin hereof.

of intended marriage of appointee.

AND WHEREAS a marriage is intended shortly to be solemnized between the said [*appointee*] and [*intended husband*].

NOW THIS DEED WITNESSETH as follows:—

Appointment of share.

1. In pursuance of such last-mentioned Order, and in exercise of the power in that behalf given by the said will, and of every other power enabling him in this behalf, he the said [*committee*], acting on behalf of the said [*lunatic*] [*or, if the lunatic is not so found by inquisition,* "he the said [*lunatic*], acting by the said A., as aforesaid"], hereby appoints that one equal fourth part or share of and in the said stocks, funds, shares, and securities specified in the said schedule, and of and in all other, if any, the

(*c*) Lunacy Act, 1922, s. 1.

residuary personal estate of the said [*testator*], and of and in the stocks, funds, shares, or securities, for the time being representing such fourth part or share, shall from and after the death of the said [*lunatic*] remain and be held in trust for the said [*appointee*]. V. BY COMMITTEE OF LUNATIC, &c.

2. PROVIDED ALWAYS that the appointment hereby expressed to be made shall be void if the said intended marriage shall not take place within twelve calendar months from the date of these presents. Proviso.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

VI. APPOINTMENT *by a Father and Mother of* STOCK *amongst their* CHILDREN EQUALLY, *excluding Eldest Son, subject to their own Life Interests therein; with* PROVISOES *as to Survivorship with regard to Shares appointed to two Infant Daughters; with* POWER *of* REVOCATION (*d*). (*By Indorsement.*)

A DEED OF APPOINTMENT, made by A., of, &c., and B., of, &c., his wife, in the within written indenture called, &c., and hereinafter called the appointors. WHEREAS shortly after the date of the within written indenture, the then intended marriage between the appointors was duly solemnised. Recital of appointor's marriage;

AND WHEREAS the trust funds now subject to the trusts of the said indenture of settlement are represented by the sum of £——, $2\frac{1}{2}$ per cent. Consolidated Stock (*e*), standing in the names of [*trustees*] the present trustees of the same indenture. of state of trust fund;

AND WHEREAS there is issue of the said marriage, now living, two sons, namely, A. B. and C. B., and five daughters, namely, E. Y., the wife of, &c., F. B., G. B., H. B., and I. B.; and all of state of family;

(*d*) Stamp, 10*s.*: see Preliminary Note, *ante*, p. 55.

(*e*) This is the proper designation of the stock created by the conversion of the old 3 per cents. under the National Debt Conversion Act, 1888, s. 2. As to making consols and other stocks transferable by deed, see Finance Act, 1911, s. 17, and the regulations thereunder, (1912) W. N. part 2, p. 115.

VI. BY FATHER AND MOTHER OF STOCK AMONG CHILDREN,&C.

the said children, except the said H. B. and I. B., have attained the age of twenty-one years.

AND WHEREAS the said A. B., the eldest son of the appointors, being otherwise sufficiently provided for, the appointors are desirous that the whole of the trust funds which now are or may hereafter be subject to the trusts of the said indenture of settlement shall be secured to their children, exclusive of the said A. B., in such manner and subject as hereinafter appears.

NOW THIS DEED WITNESSETH as follows:—

Appointment after death of father and mother, in trust for children other than A. B. equally.

1. In exercise of the power to them for this purpose reserved by the within written indenture of settlement, and of all other powers enabling them in this behalf, they the appointors hereby jointly appoint, that from and immediately after the decease of the survivor of them, the appointors, the said trust funds, and the income thereof, shall remain and be IN TRUST for the said C. B., E. Y., F. B., G. B., H. B., and I. B. respectively, in equal shares.

Proviso for accruer if either of the two infant daughters should die under 21, without having been married.

2. PROVIDED ALWAYS that if either of them the said H. B. and I. B. shall die under the age of twenty-one years, without having been married, then the share of her so dying, of and in the said trust funds shall go and remain to the said C. B., E. Y., F. B. and G. B., and the survivor of them, the said H. B. and I. B., in equal shares.

Proviso for accruer if both infant daughters should die under 21, without having been married.

3. PROVIDED FURTHER NEVERTHELESS, that if both of them the said H. B. and I. B. shall die under the age of twenty-one years, without having been married, then and in such case, as well the original share of the survivor of them, so dying, as the share which by virtue of the last-mentioned clause shall have survived or accrued to the survivor of them, of and in the said trust funds shall go and remain to the said C. B., E. Y., F. B., and G. B., in equal shares.

Advancement and maintenance clauses, &c., in settlement to apply to appointed shares.

4. The appointors further declare that all the powers and provisions in the within written indenture contained for the advancement of children (whether in the lifetime or after the death of the appointors), and maintenance and education of minor children, and the accumulation and application of surplus income of the shares of minors shall be applicable to the shares hereinbefore appointed in the same manner as if the same or the like powers and provisions had been herein inserted, or as near thereto as may be.

VI. BY FATHER AND MOTHER OF STOCK AMONG CHILDREN, &C.

5. PROVIDED ALSO that it shall be lawful for the appointors at any time or times during their joint lives, by any deed or deeds, or for the survivor of them, at any time or times during his or her life in like manner or by will or codicil to revoke all or any of the trusts and provisions hereinbefore declared and contained, of and concerning the said trust funds, and the income thereof, or any part thereof respectively, and to appoint and declare any new or other trusts or provisions concerning the same respectively. Power of revocation.

IN WITNESS, &c.

VII. REVOCATION *of Appointment (see the last Precedent), and* NEW APPOINTMENT *(by Endorsement upon the revoked Appointment)* (*f*).

A DEED OF APPOINTMENT, made by [*father*], of, &c. WHEREAS the above-named [*mother*] died on the —— day of ——, 19—. AND WHEREAS the above-named H. B. died on the —— day of ——, 19—, an infant and unmarried. AND WHEREAS the said I. B. attained the age of twenty-one years on the —— day of ——, 19—. Recitals.

AND WHEREAS on the —— day of ——, 19—, the above-named F. B. [*second daughter*], married [*husband*], of, &c., and is now otherwise sufficiently provided for by virtue of an indenture of settlement made prior to her marriage by her said husband.

NOW THIS DEED WITNESSETH, that the said [*father*], in exercise of the power reserved to him by the above-written deed (*h*), and of every other power in this behalf him enabling, hereby revokes the appointment made by the above-written deed and the trusts therein declared and contained. AND ALSO in exercise of the power reserved to him by the within written indenture, and of every other power in this behalf him Revocation (*g*). New appointment.

(*f*) This deed requires two 10*s*. stamps for the revocation and the appointment respectively. Notice of this deed should be given to the trustees.

(*g*) As to the importance of exercising the power of revocation, see Preliminary Note, *ante*, p. 57.

(*h*) As to election by appointees, where the appointor not having reserved a power of revocation, purports to make a new appointment, see *Pickersgill* v. *Rodger*, 5 Ch. D. 163.

VII. REVOCATION AND NEW APPOINTMENT.

enabling, appoints that the above-mentioned trust funds, and the income thereof, shall, from and immediately after the decease of the said [*father*], remain and be in trust for the above-named C. B., E. Y., G. B., and I. B. in equal shares. PROVIDED ALWAYS, that it shall be lawful for the said [*father*] at any time or times hereafter by any deed or deeds revocable or irrevocable or by will or codicil, to revoke all or any of the trusts and provisions hereinbefore contained of and concerning the trust funds, and the income thereof, or any part thereof respectively, and to appoint and declare any new or other trusts or provisions concerning the same respectively (*i*).

Power of revocation.

IN WITNESS, &c.

VIII. DEED POLL *making a previous revocable* APPOINTMENT *under a* SPECIAL POWER *absolute by a* RELEASE *of the* POWER *of* REVOCATION (*Endorsed on the Settlement or on the last Appointment if made by separate Instrument* (*k*).

Release.

THIS DEED OF RELEASE WITNESSETH, that the within-named [*father*], by virtue of every or any power enabling him in this behalf, whether under the within written [*or*, mentioned] indenture of settlement, the above [*or*, within] written deed poll of revocation and new appointment or otherwise, doth hereby absolutely release and give up the power of revocation in the said last mentioned deed poll contained to the intent that the appointment therein contained in favour of the within named C. B., E. Y., G. B., and I. B., shall, subject to the life interest of the within named [*father*], in the income of the within mentioned trust funds, become and be henceforth absolute and indefeasible (*l*).

IN WITNESS, &c.

(*i*) If desired the power of advancement under the settlement may be applied to the appointed shares as in clause 4 of Prec. VI., p. 68.

(*k*) Stamp, 10*s.*; see Stamp Act, 1891, sched., *tit.* "Release."

(*l*) Notice of this deed should be given to the trustees of the will. This release is made by virtue of sect. 155 of the L. P. A. 1925, and a married woman can release the power by an unacknowledged deed: see *Re Chisholm's Sett.*, [1901] 2 Ch. 82. The fact that the release of a special power will benefit the donee does not make it fraudulent and void: see *Re Somes*, [1896] 1 Ch. 250.

IX. APPOINTMENT *of* GUARDIAN *by a Father*.

IX. OF GUARDIAN BY FATHER.

KNOW ALL MEN BY THESE PRESENTS that I [*father*], of, &c., hereby appoint [A. B.], of, &c., to be the guardian of my children, from and after my decease, until, being sons, they shall respectively attain the age of twenty-one years, or being daughters, they shall respectively attain that age or marry, and I commit to the said [A. B.] the sole custody and tuition of my said children accordingly: PROVIDED ALWAYS, that if the said [A. B.] shall die in my lifetime or before the youngest of my children, being a son, shall attain twenty-one years of age, or being a daughter, shall attain that age or marry, then I hereby appoint [C. D.], of, &c., such guardian of my children as aforesaid, and commit to him the sole custody and tuition of them accordingly.

Appointment.

IN WITNESS, &c. (*m*).

X. PRESENTATION TO A BENEFICE (*n*).

TO THE RIGHT REVEREND FATHER IN GOD [*bishop*], by Divine permission Lord Bishop of ——, or to his Vicar general or spiritual, or to any other person having or that shall have sufficient authority in this behalf:—

I [*patron*], of, &c., the patron of the advowson of the rectory of the parish church of ——, in the county of ——, and diocese of —— aforesaid, DO HEREBY PRESENT to your Lordship, and to the rectory of —— aforesaid, now become vacant by the death [*or*, "resignation," *or as the case may be*] of the Reverend [A. B.], clerk, the last incumbent thereof, and to my presentation in full right belonging, the Reverend [C. D.], clerk, Master of Arts, now of, &c., humbly praying that your Lordship will be graciously pleased to admit and institute him to the said

Presentation.

(*m*) This appointment must be by deed (see stat. 12 Car. 2, c. 24), and should be attested by two witnesses: but see *Morgan* v. *Hatchell*, 19 Beav. 86. It is by its nature testamentary and revocable by will: *Ex parte Earl of Ilchester*, 7 Ves. at p. 367. Under sect. 8 of the Act an infant father can appoint guardians by deed. The appointment is subject to the mother's rights under the Guardianship of Infants Act, 1886. The stamp will be 10*s*.

(*n*) No stamp is required: see 40 & 41 Vict. c. 13, s. 13.

X. PRESENTATION TO A BENEFICE.

rectory, and to invest him with all its rights, members and appurtenances, and cause him to be inducted into the same, and to do and execute all other things which shall appertain to your Lordship's episcopal office in this behalf (*o*).

IN WITNESS, &c.

XI. APPOINTMENT *of a* PARISH CLERK (*p*).

Appointment.

KNOW ALL MEN BY THESE PRESENTS, that The Parochial Church Council of the parish of ——, by ——, —— and ——, being their chairman and two of their members, and ——, rector [*or*, vicar], of the parish church of ——, in the county of ——, clerk in holy orders, hereby nominate and appoint [A. B.], of, &c., to be parish clerk of the said parish church, in the place of C. D., deceased, to hold and execute the said office by himself [his deputy or deputies] during the term of his life, and to receive and take for his own use all such wages, fines, fees, dues, profits, and emoluments as appertain to the said office and of right ought to belong to the same, in the same manner in every way as the said [C. D.] or any former clerk of the parish church had or should have had as due and of right accustomed.

IN WITNESS, &c.

XII. APPOINTMENT *of a* GAMEKEEPER *by a* LORD *of a* MANOR (*including* POWER *to* KILL GAME *and to seize* ENGINES, *&c., and* FISHING NETS (*q*) (*r*).

KNOW ALL MEN BY THESE PRESENTS, that I, A., of, &c., lord [*or*, lady] of the manor of ——, in the county of ——, do

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(*o*) See Benefices Act, 1898 (61 & 62 Vict. c. 48), as to grounds for refusal by a bishop to institute.

(*p*) Stamp, 10*s*. The appointment of a parish clerk is now regulated by the Parochial Church Councils (Powers) Measure, 1921, s. 6 (iii), which empowers a parochial church council, jointly with a rector, vicar, perpetual curate or curate in charge, to appoint and dismiss the parish clerk or sexton, and to determine their salaries and the conditions of the tenure of their offices or of their employment. But those who were clerks of ancient parishes when this Measure was passed hold their office for life, and at common law have a freehold in it. See also Local Government Act, 1894, s. 3 (9).

(*q*) Stamp, 10*s*.: see Stamp Act, 1891 (54 & 55 Vict. c. 39), sched. *tit.* "Deputation."

(*r*) As to the appointment of gamekeepers, see 1 & 2 Will. 4,

hereby, by virtue of the statute in that behalf, appoint and depute [*gamekeeper*], of, &c., to be a gamekeeper of and in the said manor during my pleasure, with full power, licence, and authority within and upon the said manor to preserve [and kill] the game for my sole use and benefit [*or*, "for his own use or for the use of any other person or persons whatsoever"], and also within the same limits, so far as the law allows, to take and seize for my use all such dogs, nets, and other engines and instruments for the taking or killing of game as within the precincts of my said manor shall be used by any person not holding a game licence or not authorised by me to kill game. [AND I hereby authorise the said [*gamekeeper*] to demand, seize, take, and keep for my own use, all rods, lines, hooks, nets, and other instruments for taking or destroying fish which he shall find used or laid, or in the possession of any person or persons whomsoever, fishing in any river or fishery whatsoever within my said manor without my consent.]

AND FURTHER, I authorise the said [*gamekeeper*] to do and execute all acts and things which may be requisite for the preservation of the game within the said manor and for the discovery of offenders therein, according to the laws of this realm, and for which this shall be his sufficient warrant.

Given under my hand and seal this —— day of ——.

Signed, sealed, and delivered
in the presence of ——.

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c. 32, ss. 13, 14, 16. The appointment must be "under hand and seal": see sect. 13. As to Wales, see sect. 15. By sect. 16, the appointment must be registered with the clerk of the peace for the county or place within which the manor is situate. By sect. 36, persons entitled to game or occupying the lands, or their gamekeepers or servants, are authorised to take game from trespassers, and by sect. 2 the word "game" is declared for the purposes of that Act to include "hares, pheasants, partridges, grouse, heath or moor game, black game and bustards." This precedent may still be useful, as, by L. P. A. 1922, sched. 12, s. 5, enfranchisement is not to affect any right of the lord to chase warren, piscaries, or other rights of hunting, shooting, fishing, fowling or otherwise taking game, fish or fowl.

APPOINTMENTS OF NEW TRUSTEES.

PRELIMINARY NOTE.

Stamps.

UNDER the Stamp Act, 1891, s. 4, except where express provision to the contrary is made by that or any other Act, instruments relating to distinct matters are to be separately charged with duty in respect of each of the matters. (See *Hadgett* v. *I. R. Commrs.*, 3 Exch. D. 46; *Massarene* v. *I. R. Commrs.*, [1900] 2 Ir. R. 138. (See also Stamp Act, 1891, Schedule I., under title "Appointment," and s. 62.)

The stamp fixed by the schedule of the Stamp Act, 1891, for "appointment of a new trustee" is 10*s*. Sect. 62 of the Act provides that a conveyance or transfer made for effectuating the appointment of a new trustee is not to be charged with a higher duty than 10*s*., and this provision is, by the Finance Act, 1902, s. 9, extended to the retirement of a trustee without a new trustee being appointed. (See, too, Stamp Act, 1891, s. 78, and Finance (1909-10) Act, 1910, s. 74 (6).) But having regard to sect. 74 (2) of the last mentioned Act, wherever the deed of appointment operates as a conveyance or transfer of trust property the stamp must be adjudicated. (See also Finance Act, 1920, s. 36 (2).)

Statutory powers of appointment.

Appointments of new trustees can now be made under sects. 36 and 37 of the Trustee Act, 1925, where a trustee (1) is dead, (2) remains out of the kingdom for more than twelve months (*Re Walker*, [1901] 1 Ch. 259), (3) desires to be discharged, (4) refuses or is unfit to act, (5) is incapable of acting, or (6) is an infant.

A donee of the power of appointment can now appoint himself (see Trustee Act, 1925, s. 36 (1)), which authorises the appointor to appoint one or other persons "whether or not being the persons exercising the power."

A trustee who disclaims is one who "refuses to act," that is to say, within the statutory or ordinary express power, he is a "refusing trustee." But the effect of his disclaimer is that he was actually never a trustee technically. (See *D'Adhemar* v. *Bertrand,* 35 Beav. 19.) A bankrupt trustee is not, *qua* bankrupt, "incapable of acting," but if he has absconded he is "unfit to act" as trustee within the power of appointing a new trustee without application to the Court. (See *Re Harrison* (1883), W. N. 31; *Re Wheeler and De Rochow,* [1896] 1 Ch. 315; *In re Sichel's Settlements,* [1916] 1 Ch. 358.)

A lunatic trustee is "incapable of acting." (*Re East,* 8 Ch. 735; *Re Blake* (1887), W. N. 173; *Re Cutler,* 39 Sol. J. 484.) And in the place of a lunatic trustee who is entitled in possession to a beneficial interest in the trust property, the continuing trustees or trustee may make no appointment without the leave of the judge or of the Master in Lunacy. (Trustee Act, 1925, s. 36 (1).) As to bodily and mental infirmity not amounting to lunacy, see *Re Lemann,* 22 Ch. D. 633; *Re Barber,* 39 Ch. D. 187. The statutory power now applies to incapacity or unfitness by reason of infancy. (Trustee Act, 1925, s. 36 (1).)

Whenever there is a difficulty in proving or preserving evidence of "incapacity or unfitness," *e.g.*, where it arises from mental or physical infirmity, the appointment should be made by the Court under Trustee Act, 1925, s. 41. Where the appointment will be valid only upon proof of facts which at the date of the appointment cannot easily be proved, and may be less easy to prove as time passes, the statutory power should not be used. The best course then will be to apply to the Court to appoint under Trustee Act, 1925, s. 41.

By Trustee Act, 1925, ss. 36 (6) (a) (b), 37 (1) (b) (c), provision is also made for increasing the number of trustees and appointing separate trustees of the several parts of trust property held on different trusts. It is also made needless to appoint more than one trustee where only one was originally appointed, or to fill up the number where more than two were originally appointed. Under sect. 37 (1) (b) of the Act, a separate set of trustees not exceeding four may be appointed as shown, and under sect. 37 (1) (c) a trustee is not to be discharged from his trust unless there be either a trust corporation, or at least two persons to act

as trustees to perform the trust, and the trust property is vested in the new trustees. The appointment of a separate set of trustees may be made for any part of the trust property held on trusts distinct from those relating to any other part or parts thereof. To do this effects a severance of the trusts, and it may be done despite the trusts coalescing in a certain event. (See *Re Hetherington,* 34 Ch. D. 211.)

Trustees (1) for the purposes of the Settled Land Act, 1925, or (2) for managing an infant's land, whether appointed by the Court, the settlement, or another instrument, are included in the powers and provisions as to the appointment, discharge, and retirement of trustees contained in the Act. (See Trustee Act, 1925, s. 64.)

Where trustees for the purposes of the Settled Land Act, 1925, are not appointed by the settlement, and have therefore been appointed by the Court, power to appoint new or further Settled Land Act trustees is expressly vested in those appointed so to do by any instrument creating the trust, or in default of such person or persons, in the surviving or continuing trustees or trustee for the time being, or in the personal representatives of the last of them. (*Ibid.*, sub-sect. 2.)

Under sect. 35 of the Act, a memorandum of the names and addresses of those who are for the time being settlement trustees must be endorsed on the last or only principal vesting instrument upon each new appointment.

Under sect. 36 (1) of the Act, those nominated by the trust instrument to appoint, or the trustees or trustee for the time being, may appoint (but not so as to increase the total beyond four) (i) where a sole trustee not being a trust corporation is or has been appointed, (ii) where there are not more than three trustees, of whom none is a trust corporation, whether original or not, and however appointed.

By sect. 39 of the Act of 1925, where there are more than two trustees, one of them may retire with the consent by deed of his co-trustees, and of any person empowered to appoint trustees, on declaring by deed his desire to be discharged, provided that after his discharge there will be either at least two individuals as trustees, or else a trust corporation, to perform the trust. Where

the Public Trustee is a trustee with one other trustee the latter may retire under sect. 5 (2) of the Public Trustee Act, 1906.

The number of trustees may be reduced (1) when an appointment is made to fill a vacancy, or (2) when a new appointment follows the retirement of a trustee. Under the power to retire from the trust under the Trustee Act, 1925, s. 39, the above indicated provisions as to retirement must be complied with. But despite this provision, and the express inclusion in the trust instrument of a provision against reduction below a certain number, the donee of a power of appointment may appoint the Public Trustee sole trustee. (See *Re Loche*, [1911] 1 Ch. 611; *Re Moxon*, [1916] 2 Ch. 595.) In an action to administer the trust, but not upon an application therefor under Trustee Act, 1925, s. 41, the Court can discharge one of several trustees without appointing a new one. But the Court, in the case of a lunatic, bankrupt, or absconding trustee, has been more prone, of late, to appoint not the remaining trustee, but a new one, in the place of such. (See *Re Aston*, 23 Ch. D. 217; *Re Lamb*, 28 Ch. D. 77; *Re Gardiner*, 33 Ch. D. 590; but not where the whole fund is distributable at once (*Re Martyn*, 26 Ch. D. 745), or where trustees are to pay funds, when received, to Court which is administering. (See *Davies* v. *Hodgson*, 32 Ch. D. 225. See also *Re Leon*, [1892] 1 Ch. 348, where a vesting order, under Lunacy Act, 1890, ss. 135, 136, was made when one of four trustees was found lunatic by inquisition, and no new trustee was appointed. Also *Re Lees*, [1896] 2 Ch. 508, and *Re Fitzherbert*, [1898] W. N. 58, in each of which cases a like order was made upon the absconding of a bankrupt trustee.) Sect. 40 of the Trustee Act, 1925, provides for vesting certain trust property in the new trustees by a declaration to be made by the appointor. This vesting declaration applies to "any estate or interest in land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action," and is to be to the effect that such estate or interest, &c. shall vest "in the persons who by virtue of the deed become and are trustees for the performance of the trust." This includes the continuing as well as the new trustees. As to the application of this section to mortgages by sub-demise for the purpose of getting in the original term, see *London and County Bank* v. *Goddard*, [1897] 1 Ch. 642, referred to in *Re Taylor and London County Bank Co.*, [1901]

2 Ch. 231; *In re Chafer*, [1916] 2 Ch. 13. Sub-sect. (2) of sect. 40 of the Trustee Act, 1925, extends the operation of the vesting declaration to the case of a retiring trustee, provided that the deed discharging the retiring trustee where no new trustee is appointed contains a declaration prescribed in Trustee Act, 1925, s. 40 (a), made by the retiring and continuing trustees and any person empowered to appoint. Such deed then vests the estate, right, or interest to which it relates in the continuing trustees. Even if the estate, right, or interest to be vested is not expressly described, the declaration is not thereby invalidated, but operates to vest such estate and interest as it can and should vest: and accordingly a deed of appointment or discharge subsequent to December 31st, 1925, without such declaration, will operate as if it contained such declaration, subject to an express declaration to the contrary. (See sect. 40 (2) (b).) Sub-sect. (4) excludes from the section any legal estate or interest in land held under lease, underlease, or agreement for either, containing a covenant, condition, or agreement against assignment or disposition without licence or consent, unless (a) such licence or consent is obtained before the execution of the deed containing the vesting declaration, or (b) the vesting declaration would not operate as a breach of covenant or cause a forfeiture: the sub-section also excludes mortgage securities, and any share, stock, annuity, or property "only transferable in books kept by a company or other body, or in manner directed by or under Act of Parliament." Thus, in the continuing trustees, or in the continuing and new trustees, will be vested, *inter alia*, if there be nothing in the deed to the contrary, all freehold estates and interests in land, and in chattels personal, the right to recover all debts and to receive them, and all choses in action. The exception of land which is included in the term "mortgage securities" probably renders a vesting declaration inoperative in respect of all interests in land acquired by legal mortgage by demise, or by charge by way of legal mortgage, which operates under Law of Property Act, 1925, s. 87. Accordingly, when any change of trustees is made, the transfer of the legal interest in mortgage terms must be made as required by Law of Property Act, 1925, s. 114 (3).

Under Public Trustee Act, 1906, s. 5, the Public Trustee may be appointed, by that name or by other adequate description, trustee of a will, settlement, or other instrument creating a trust,

or of any trust which the Public Trustee Rules, 1912, authorise him to accept, whether such trust was created before or after the Act, just as if he were a private trustee, and where a private trustee could not be appointed a sole trustee, the Public Trustee can be so appointed. But he can be trustee only of an English settlement. (See *Re Hewitt*, [1915] 1 Ch. 228.) Failure to give notice of a proposed appointment will not invalidate such appointment when made, but, where possible, such notice should be given to all those beneficially interested and living in the United Kingdom, and in the case of such of them as are infants, to their guardians. On the application of any of those to whom notice is given, the Court may make an order prohibiting the Public Trustee's appointment. (See *Re Hope-Johnstone*, 53 Sol. J. 321.)

Public trustee.

A custodian trustee is not a trustee for the purpose of determining the number of trustees (see Public Trustee Act, 1906, s. 4 (2) (g)), and although two or more trustees were originally appointed, the Public Trustee may be appointed sole trustee (*s*). (See generally as to the appointment of the Public Trustee as trustee or custodian trustee, the Public Trustee Act, 1906. See also paragraph above.)

Corporation as trustee.

As to appointing a corporation as trustee jointly with an individual, see Bodies Corporate (Joint Tenancy) Act, 1899; *Re Thompson*, [1905] 1 Ch. 229.

Registered land.

In the case of land registered under the Land Transfer Act, 1897, and the Land Registration Act, 1925, the form of appointment will be the same as where the land is not registered; but the proper alterations must be made in the register. If the trustees are the registered proprietors, the transfer may be made by a registered transfer, but the vesting declaration should be inserted in the appointment to enable the registrar to make the proper entry on the register in case of undue delay or expense in obtaining the execution of the transfer by a trustee registered as proprietor. If the tenant for life is the registered proprietor, no transfer or vesting declaration is necessary.

Under Land Registration Act, 1925, s. 47, on the appointment or discharge of a trustee, or on any other event, the Registrar is to give effect to any express or implied vesting order or vesting declaration made, and also to dispositions made, by anyone authorised in the name and on behalf of a proprietor. Further,

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(*s*) See *Re Leslie*, [1911] 1 Ch. 611.

by the same section, the provisions of the Trustee Act, 1925, as to the appointment and discharge of trustees, are to apply to registered land, provided the proper entry is made on the register.

Judicial trustees.

As to the appointment by the Court of judicial trustees, see the Judicial Trustee Act, 1896 (sect. 3 of which Act is repealed by Trustee Act, 1925, and re-enacted by sect. 61 of that Act); and see also *Re Ratcliff*, [1898] 2 Ch. 352; *Douglas* v. *Bolam*, [1900] 2 Ch. 749. The Court has no power under the Trustee Act, 1925, to appoint an executor or administrator. (See sect. 41, sub-sect. (4).)

A person, including a bank (*Re Cohen*, 62 Sol. J. 682), may be appointed as joint or as sole trustee by the Court, (a) on the application of anyone who creates or intends to create a trust, or (b) on an application by or on behalf of any beneficiary. Such appointment may, if there be adequate reason, be effective to replace all or any of the existing trustees, but whether there shall or shall not be any such appointment is for the Court alone to decide (*Re Ratcliff*, *ubi sup.*; *Douglas* v. *Bolam*, *ubi sup.*), and the Public Trustee may be thus appointed as judicial trustee under Public Trustee Act, 1906, ss. 2 (1) (d), and 6 (2).

The retirement of judicial trustees is regulated by Judicial Trustee Rules, 1897, 1899, 1910, rr. 23, 24. See also *Re Johnstone*, 105 L. T. 701.

See further as to the appointment of new trustees, K. & E., 11th ed., Vol. 1, pp. 119—128.

PRECEDENTS.

I. APPOINTMENT *by* WRITING *not under* SEAL *or by* DEED POLL *under an* EXPRESS POWER *to appoint by* DEED *or* WRITING, *or under the* STATUTORY POWER, *of a* NEW TRUSTEE *of a* SETTLEMENT *of* MONEY *in the* FUNDS *in place of a* RETIRING TRUSTEE. (*By* INDORSEMENT.) (*a*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, I [*appointor*], formerly the within named [*maiden name*], and now

(*a*) Although the statutory power, and in the precedent above the express power by virtue of the instrument creating it, is made exercisable by writing, not under seal, it is better it should be by deed, the stamp being the same. The statutory power is not exercisable by will: *Re Parker*, [1894] 1 Ch. 707. The stamp will be 10*s*.

I. NOT UNDER SEAL OR BY DEED POLL, &C.

the widow of the within named [*deceased husband*], deceased, send greeting.

WHEREAS the within named [*retiring trustee*] is desirous of being discharged from the trusts of the within written indenture.

Recitals: of trustee's wish to retire (*b*); of desire to appoint new trustee; of state of trust property (*c*).

AND WHEREAS I am desirous of appointing [*new trustee*], of ——, to be a trustee of the within written indenture in place of the said [*retiring trustee*].

AND WHEREAS the property now subject to the trusts of the within written indenture consists of the sum of £——, Two and a Half per Cent. Consolidated Stock, and it is intended that the same shall immediately after the execution of these presents be transferred into the joint names of the said [*continuing trustee*] and [*new trustee*].

Donee of power appoints new trustee.

NOW THIS DEED WITNESSETH that, in exercise of the power given to me [*her*] by the within written indenture [by the statute in that behalf], and of every other power [*her*] hereunto enabling, hereby appoints the said [*new trustee*] to be a trustee in the place of the said [*retiring trustee*], and to act jointly with the within named [*continuing trustee*] for all the purposes of the within written indenture, or such of the same as are now subsisting and capable of taking effect (*d*).

IN WITNESS, &c.

(*b*) The recitals of the marriage and death of the husband are here omitted for the sake of brevity; these facts are implied by the description of the appointor as widow. The retiring trustee should by a statement in writing, either indorsed on or appended to the settlement, affirm his desire to retire from the trust.

(*c*) The trust funds are sometimes transferred before the appointment, but it is not strictly proper to do so.

(*d*) Where the donee of the power is a lunatic, whether so found or not, the power may be exercised by his committee by order of a judge, the Master in Lunacy or of the Assistant Master in Lunacy: see Lunacy Act, 1922, s. 1 (2); see sects. 128, 129, and 135 of the Lunacy Act, 1890, and sect. 27 (1) of the Lunacy Act, 1891; *Re Shortridge*, [1895] 1 Ch. 278; *Re Fuller*, [1900] 2 Ch. 551; distinguished in *Re Langdale*, [1901] 1 Ch. 3. If a vesting order is required application must be made to the High Court, to whom the powers of making vesting orders under sects. 135—143 of the Lunacy Act, 1890, are transferred by the Lunacy Act, 1911, s. 1.

II. OF PERSONALTY.

II. APPOINTMENT *of a* NEW TRUSTEE *of* PERSONALTY *under the* STATUTORY POWER *by* CONTINUING AND RETIRING TRUSTEES, *one* TRUSTEE *having* DIED *and one* RETIRING, *but only* ONE *being* APPOINTED *in the* PLACE *of the* TWO. RECITALS *as to* DEALINGS *with the* TRUST PROPERTY. VESTING DECLARATION. RELEASE *to the* RETIRING TRUSTEE *given by the* BENEFICIARIES *who are* SUI JURIS (*e*). (*By* SUPPLEMENTAL DEED.)

Parties.

THIS DEED OF APPOINTMENT (*f*), made the —— day of ——, 19—, BETWEEN [*continuing trustee*] (*g*), of, &c., and [*retiring trustee*], of, &c., of the first part, [*husband*], of, &c., and [*wife*], his wife, of the second part, [*adult beneficiary*], of, &c., [*adult beneficiary*], of, &c., and [*adult beneficiary*], of, &c., of the third part, and [*new trustee*], of, &c., of the fourth part;

Deed expressed to be supplemental.

WHEREAS this deed is supplemental to an indenture, dated, &c., and expressed to be made between [*parties*] (*h*), and hereinafter referred to as the principal indenture, being a settlement made in consideration of the marriage then intended, and which was shortly afterwards solemnized between the said [*husband*] and [*wife*].

Recitals: of death of deceased trustee;

WHEREAS the said [*deceased trustee*] died on the —— day of ——

of state of family;

AND WHEREAS there has been issue of the said marriage, three children and no more, namely, the said [*beneficiaries*], all of whom have attained the age of twenty-one years.

of sums raised for advancement;

AND WHEREAS since the date of the principal indenture two several sums of £—— and £—— respectively have been raised

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(*e*) A retiring trustee cannot insist on a release where the trust estate and accounts are of a simple nature, but where a release is given it is usually preferable to make it by a separate deed which the retiring trustee keeps.

(*f*) This deed will require a 10*s.* stamp for the appointment, another for the vesting declaration (if any), and the third for the release (if any): the stamps must be adjudicated: see Preliminary Note, *ante*, p. 74.

(*g*) In this precedent it is assumed that no person was nominated by the settlement for the purpose of appointing new trustees. The appointors will, therefore, be the continuing or surviving trustees. It is advisable, but not necessary, that the adult beneficiaries be made parties.

(*h*) The wife will be here described as

"the said [*wife*] by her then name and description of [*wife's maiden name*] spinster, of the —— part."

under the power in that behalf therein contained for the advancement in the life of the said [*adult beneficiary*] and [*adult beneficiary*] [A.] and [B.].

of sales, and dealings with trust property;

And whereas the sales and investments of and other dealings with the trust property, and the receipts and payments in respect thereof, are set out in the form of a debtor and creditor account in the first schedule hereto, from which it appears that there is a balance of £—— standing to the credit of the said [*continuing trustee*] and [*retiring trustee*] in their joint names at the —— bank.

of present state of the trust property;

And whereas the property now subject to the trusts of the principal indenture consists of the said balance of £——, and also of the several stocks, funds, shares, securities, debts, and things in action, the particulars whereof are set out in the second schedule hereto.

of desire of retiring trustee to be discharged;

And whereas the said [*retiring trustee*] is desirous of being discharged from the trusteeship of the principal indenture.

of desire to appoint new trustee;

And whereas the said [*continuing trustee*] and the said [*husband*] and [*wife*] are desirous that the said [*new trustee*] shall be appointed as trustee of the principal indenture in the place of the said [*retiring trustee*] (*i*).

of transfer of stocks, &c. (*k*);

And whereas it is intended that the stocks, funds, shares and securities, the particulars whereof are set out in the first part of the said second schedule hereto, shall forthwith be transferred or assured according to the nature thereof respectively, so as to be effectually vested in the said [*continuing trustee*] and [*new trustee*] as trustees of the principal indenture.

And whereas the mortgage securities, the particulars whereof are set out in the part of the schedule hereto, are intended to be transferred by the said [*retiring trustee*] so as to be effectually vested in the said [*continuing trustee*] and [*new trustee*] as trustees of the principal indenture by an indenture

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(*i*) Under T. A. 1925, s. 36 (6), the original number of trustees may at any time be restored by the appointment of an additional trustee, therefore an intention of "not at present supplying the place" of one who has ceased to be in the trust need not be expressed.

(*k*) The transfer of securities, &c. should be made after the appointment of the new trustee, but sometimes it is made previously. For a precedent of a transfer of a mortgage on the appointment of a new trustee, the trust not being disclosed, see *tit.* "Mortgages."

II. OF PERSONALTY.

bearing even date with and to be executed immediately after these presents, and made between, &c. (*l*).

of agreement as to beneficiaries joining (*m*).

AND WHEREAS the said [*retiring trustee*] has agreed, at the request of the parties hereto of the second and third parts, to concur in making the said appointment upon the said parties hereto of the second and third parts joining herein to testify their approval, and to give him such release as is hereinafter contained, which the said parties hereto of the second and third parts have agreed to do.

NOW THIS DEED WITNESSETH as follows:—

Appointment of new trustee.

1. In exercise of the power for this purpose by the statute in that behalf given to the said [*continuing trustee*] and [*retiring trustee*], and of every or any other power them enabling in this behalf, they the said [*continuing trustee*] and [*retiring trustee*], with the approval hereby testified of the parties hereto of the second and third parts respectively, do hereby appoint the said [*new trustee*] to be a trustee in place of the said [*retiring trustee*], and to act jointly with the said [*continuing trustee*] for the purposes of the principal indenture.

Vesting declaration (*n*).

[2. In pursuance of the said appointment the said [*continuing trustee*] and [*retiring trustee*], with the consent and approbation of the said [*husband*] and [*wife*] testified as aforesaid, do hereby

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(*l*) The T. A. 1925, s. 40 (4a), provides that the section shall "not extend to land conveyed by way of mortgage for securing money subject to the trust, except land conveyed on trust for securing debentures and debenture stock." It is therefore apprehended that, analogously to this provision, any mortgage securities comprised in the trust property must be transferred by a separate deed. Cf. K. & E. 12th ed. Prec. III. p. 137.

(*m*) The concurrence of the retiring trustee in making the appointment is not necessary since the continuing trustee can by himself make it under sect. 36 (1) of T. A. 1925 (see *Re Coates to Parsons*, 34 Ch. D. 370; ref. to in *Re Cherry's Trusts*, [1914] 1 Ch. 85); but it is advisable that he should join in the deed as evidence of his desire to be discharged, and, if willing so to do, he can make the appointment under sub-sect. (8) of the above section.

(*n*) As to the insertion of the vesting declaration, see T. A. 1925, s. 40. It may be omitted save where an interest is to be excepted, which it is desired to transfer separately: see, *e.g.*, *Webb* v. *Cross*, [1912] 1 Ch. 323. If some of the property is, and some of it is not, intended to be passed by the vesting declaration, there should be two schedules, for the property which respectively does and does not pass.

declare that all the estate and interest now vested in the said [*continuing trustee*] and [*retiring trustee*] of and in the several debts and things in action, the particulars whereof are set forth in the second part of the said second schedule hereto, and of and in all other, if any, the debts and things in action, subject to the trusts of the principal indenture, and the right to recover all or any such debts and things in action respectively [*or*, "that all and singular the personal property, including the right to recover any debt or other chose in action (except mortgage debts secured by way of legal mortgage upon land), which is the property specified in the part of the schedule hereto, and is now subject to the trusts of the principal indenture"], &c., shall forthwith vest in the said [*continuing trustee*] and [*new trustee*], as trustees of the principal indenture, upon the trusts and for the purposes and with and subject to the powers and provisions now applicable thereto under or by virtue of the principal indenture.]

Release of retiring trustee (*o*).

[2 *or* 3. In further pursuance of the said appointment, and in consideration of the premises, the said parties hereto of the second and third parts do respectively hereby, to the extent of their respective interests and abilities, release the said [*retiring trustee*] and his personal representatives from all claims, demands, proceedings, and actions in respect of the said trust estate and premises under the said principal indenture and the trusts thereof, or in respect of any sale, investment, or change of investment, payment or other dealing, or anything done or omitted by the said [*retiring trustee*] in respect thereof, or otherwise in relation thereto.]

IN WITNESS whereof the parties hereto have set their hands and seals on the day and year first above written (*p*).

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

(*o*) Upon retirement, release is sometimes stipulated for by the retiring trustee, but such release cannot in every case be a full one.

(*p*) If the power requires that the deed be executed with special formalities, and these be omitted, the appointment will be none the less valid provided the deed be executed in the presence of two witnesses; but if it be not so executed the appointment may be invalid. Cf. L. P. A. 1925, s. 159 (1).

III. OF FREEHOLDS.

III. APPOINTMENT *of a* NEW TRUSTEE *of* FREEHOLDS *in* PLACE *of a* RETIRING TRUSTEE *by* CONTINUING TRUSTEE. (SHORT FORM *by* INDORSEMENT *on the* SETTLEMENT) (*q*).

A DEED OF APPOINTMENT (*r*), made the —— day of ——, 19—, BETWEEN the within named [*continuing trustee*], of the first part; the within named [*retiring trustee*], of the second part; and [*new trustee*], of, &c., of the third part.

Parties.

Recitals: Death of trustee.

WHEREAS the within named [*deceased trustee*] died on the —— day of ——, 19—.

Desire of retiring trustee to be discharged, and of desire to appoint new trustee.

AND WHEREAS the said [*retiring trustee*] is desirous of being discharged from the trusteeship of the within written indenture, and the said [*continuing trustee*] is desirous of appointing the said [*new trustee*] to be a trustee thereof in the place of the said [*retiring trustee*] (*s*).

NOW THIS DEED WITNESSETH as follows:—

Appointment of new trustee.

1. In exercise of the statutory power in this behalf, and of every or any other power him enabling the said [*continuing trustee*], with the consent hereby testified of the said [*retiring trustee*], hereby appoints the said [*new trustee*] to be a trustee in place of the said [*retiring trustee*] for the purposes of the within written indenture.

IN WITNESS, &c.

(*q*) See notes to last precedent. It is assumed for the purpose of this precedent (1) that no consents are required by the settlement to the exercise of the statutory power of appointment; (2) that it is not intended to fill up the original number of trustees, see note (*i*), *ante*, p. 83; and (3) that there have been no sales or exchanges of the settled property.

(*r*) Stamp, 10*s*. for the appointment and a further 10*s*. for the vesting declaration. The stamp must be adjudicated: see *ante*, p. 56. On the appointment of new trustees of a settlement, a memorandum of the names and addresses of those who are for the time being trustees of the settlement for the purposes of the S. L. A. 1925, is to be indorsed on or annexed to the vesting instrument by or on behalf of the trustees of the settlement: see T. A. 1925, s. 35 (2). The description of an instrument creating a trust should be the same as the description of it contained in the instrument itself: see L. P. A. 1925, s. 57.

(*s*) As to absence of intention to supply the place of any given person who has ceased to be in the trust, see p. 83, note (*i*).

IV. DEED *of* APPOINTMENT *of a* NEW TRUSTEE *in the* PLACE *of a* RETIRING TRUSTEE *of a* WILL, *where the* PROPERTY *consists of* MONEY INVESTED *on* MORTGAGE *and in the* FUNDS; *and* DECLARATION *of* TRUST *by* CONTINUING *and* NEW TRUSTEE.

IV. WHERE THE TRUST EMBRACES MONEYS ON MORTGAGE AND IN THE FUNDS.

A DEED OF APPOINTMENT (*a*), made the —— day of ——, 19—, BETWEEN [*retiring trustee*], of, &c., of the first part, [*appointor*], of, &c., of the second part, [*new trustee*], of, &c., of the third part, and [*continuing trustee*], of, &c., and the said [*new trustee*], of the fourth part. Parties.

WHEREAS [*testator*], of, &c., deceased, duly made and executed his will, dated the —— day of ——, and thereby, after bequeathing certain legacies, devised and bequeathed all his real estate, and all the residue of his personal estate to [*trustees*], and their personal representatives, upon trust to sell and convert the same into money, and invest the produce thereof as therein mentioned; and to hold the same upon the trusts in the said will mentioned; and he declared that the said [*appointor*] should during his life have the power to appoint new trustees of his said will; and the said testator appointed the said [*trustees*] executors of his said will. Recital of will; of power to appoint new trustees;

AND WHEREAS the said [*deceased trustee*] died in the testator's lifetime. of death of trustee;

AND WHEREAS the said testator died on the —— day of ——, 19—, without having revoked or altered his said will, which was duly proved by the executors therein named other than the said [*deceased trustee*] in the Principal Probate Registry on the —— day of ——. of death of testator;

AND WHEREAS the said [*continuing and retiring trustees*] realized the said testator's real estate and the residue of his personal estate, and, out of the moneys arising therefrom, they invested the sum of £——, &c., on mortgage freehold property situate in the parish of ——, in the county of ——, and with the residue of the said trust moneys, the said [*continuing and retiring trustees*] purchased the sum of £——, Two and a Half per Cent. Consolidated Stock. Realization of estate and loan on mortgage.

(*a*) Stamp, 10*s*.

IV. WHERE THE TRUST EMBRACES MONEYS ON MORTGAGE AND IN THE FUNDS.

AND WHEREAS the said [*retiring trustee*] is desirous of being discharged from the trusts of the said will; AND the said [*appointor*] is desirous of appointing the said [*new trustee*] to be a trustee in the place of the said [*retiring trustee*].

of proposed change of trustees;

of intended transfer of mortgage and stock into the names of continuing and new trustees.

AND WHEREAS it is intended that by an indenture of transfer of mortgage of even date herewith, and expressed to be made between, &c., the said mortgage debt, and all securities for the same, shall be vested in the said [*continuing trustee*] and [*new trustee*], and that immediately after the execution of these presents the said sum of £——, Two and a Half per Cent. Consolidated Stock, shall be transferred into the joint names of the said [*continuing trustee*] and [*new trustee*].

NOW THIS DEED WITNESSETH as follows:—

Donee of power appoints new trustee.

1. In exercise of the power for this purpose by the said will of the said [*testator*], given to the said [*appointor*], and of every other power enabling him in this behalf, he, the said [*appointor*], hereby appoints the said [*new trustee*], in the place of the said [*retiring trustee*], to be a trustee of the will of the said [*testator*], for the purposes of the said will, or such of the same purposes as are still subsisting and capable of taking effect.

Clause excluding operation of implied statutory vesting declaration.

2. Sect. 40 of the Trustee Act, 1925, shall not apply to the said sum of £—— so secured and intended to be transferred as aforesaid.

IN WITNESS, &c.

V. RETIREMENT *and* DISCHARGE *of a* TRUSTEE, *without the* APPOINTMENT *of a* NEW TRUSTEE *in his place, under the Trustee Act,* 1925 (*by* SUPPLEMENTAL DEED).

Parties.

THIS DEED (*c*), made the —— day of ——, 19—, BETWEEN [*appointor*], of, &c., of the first part, [*retiring trustee*], of, &c., of the second part, and [*continuing trustee*], of, &c., and [*other continuing trustee*], of, &c., of the third part, SUPPLEMENTAL

Deed expressed to be

(*c*) See T. A. 1925, ss. 39, 40, as to the retirement of a trustee where there are more than two; and as to the retirement of a trustee where the Public Trustee is a co-trustee, see Public Trustee Act, 1906, s. 5 (2). The stamp will be 10*s.* for the retirement: see Finance Act, 1902, s. 9; and Preliminary Note, *ante*, p. 74. The stamp must be adjudicated.

to an indenture of settlement dated, &c., and made between, &c., and hereinafter referred to as "the principal indenture" (being a settlement made previously to the marriage then intended, and shortly afterwards solemnized between the said [*appointor*] and [*wife*], his wife): AND ALSO SUPPLEMENTAL to another indenture, dated, &c., and made between, &c., which last-mentioned indenture is itself supplemental to the principal indenture, and is hereinafter referred to as "the first supplemental indenture" (being an appointment of the said [*retiring trustee*] to be a trustee of the principal indenture in the place of A. B., deceased): AND ALSO SUPPLEMENTAL to another indenture, dated, &c., and made, &c., which last-mentioned indenture is also itself supplemental to the principal indenture and to the first supplemental indenture, and is hereinafter referred to as "the second supplemental indenture" (being an appointment of the said [*continuing trustee*] to be a trustee of the said principal indenture in the place of C. D., also deceased).

supplemental to settlement, and deeds of appointment of new trustees.

WHEREAS the said [*wife*] died on the —— day of ——, 19—.

Death of wife.

AND WHEREAS since the date of the second supplemental indenture the said [*retiring trustee*] and [*continuing trustees*] have, with the consent of the said [*appointor*], in execution of the trusts, and in pursuance of the directions contained in the principal indenture, sold the messuage and hereditaments situate at —— mentioned in the principal indenture, and being part of the property thereby settled, and have invested the proceeds of the said sale in the purchase in their joint names of £—— Debenture Stock of the —— Railway.

Of sale of part of trust property;

AND WHEREAS the several stocks, shares, and other investments now subject to the trusts of the principal indenture are set forth in the schedule hereto.

of present state of trust property;

AND WHEREAS the said [*retiring trustee*] is desirous of being discharged from the trusts of the principal indenture.

of desire of trustee to be discharged;

AND WHEREAS the said stocks, shares, and other investments mentioned in the said schedule have already been transferred into the names of the said [*continuing trustees*] alone (*d*).

of transfer of trust funds.

(*d*) If the transfer of the stocks, &c. is deferred till after the appointment is made (see note (*k*), p. 83), this recital will have to be altered accordingly by adapting the recital of transfer on p. 83, *ante*.

V. RETIREMENT AND DISCHARGE OF TRUSTEE.

NOW THIS DEED WITNESSETH as follows:—

1. The said [*retiring trustee*] hereby declares that he is desirous of being discharged from the trusts of the principal indenture.

Declaration of desire to be discharged, &c.

2. The said [*continuing trustees*] and [*appointor*] hereby consent to the discharge of the said [*retiring trustee*] from the trusts aforesaid, and to the vesting in the said [*continuing trustees*] alone of the trust property now held upon or subject to the trusts of the principal indenture.

Consent to such discharge, &c.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

VI. APPOINTMENT *of* SEPARATE SETS *of* TRUSTEES *of* DISTINCT *parts of* PERSONALTY *by the* PERSONAL REPRESENTATIVE *of the last surviving Trustee.* VESTING DECLARATION (*e*).

Parties.

THIS DEED OF APPOINTMENT (*f*), made the —— day of ——, 19—, BETWEEN [*representative of last surviving trustee*], of the first part; E. D. [*tenant for life of one share*], the wife of F. D., of, &c.; and the said F. D., of the second part; [*new trustee of first share*], of, &c.; and [*other new trustee of first share*], of, &c., of the third part; and [*new trustee of second share*], of, &c., and [*other new trustee of second share*], of, &c., of the fourth part.

(*e*) See sects. 36 (1), 37 (1) (b), and 40 of T. A. 1925, as to the appointment of separate trustees and the vesting declaration. The statutory as well as the ordinary express power applies to the case of a trustee named in the will predeceasing the testator, and is exercisable by the personal representative of the last surviving trustee; but it would not apply in the event of all the trustees named in the will dying in the testator's lifetime. A deceased sole trustee is a "last surviving or continuing trustee." As to the powers of the personal representative of a "sole" or "last surviving" trustee, pending the appointment of new trustees, see T. A. 1925, s. 18.

(*f*) Having regard to the Stamp Act, 1891, s. 4, it would seem that four 10*s*. stamps would be required for this deed—one each for the separate appointments and two for the vesting declaration, if any, as it operates as a double conveyance; but the stamps must be adjudicated: see *ante*, p. 74.

VI. OF SEPARATE SETS OF TRUSTEES OF DISTINCT SHARES.

Recitals: of will of testator;

WHEREAS [*testator*], late of, &c., deceased, duly made and executed his will dated the —— day of ——, and thereby gave, devised and bequeathed all the residue of his real and personal estate and effects after and subject to the payment thereout of his personal and testamentary expenses and debts, and of the specific and pecuniary legacies and annuities therein respectively mentioned, unto and to the use of [*trustees*], their heirs, executors, and administrators, according to the tenure or nature of the same premises respectively, upon trust to sell and convert the same into money, and to invest the proceeds of such sale and conversion as therein mentioned, and to stand possessed of such investments and of the dividends and income thereof, as to one equal moiety or half part thereof, upon trust for his son C. B. during his life, and after his death for the benefit of the issue of his said son, as therein mentioned; and as to the other equal moiety or half part of the said trust premises upon trust for his daughter E. D. during her life, and from and after her decease for the benefit of her husband F. D. and her issue, as in the said will is mentioned, and the said [*testator*] empowered his trustees to appropriate any part of his residuary estate in its then state of investment in or towards satisfaction of any share in his residuary estate (*g*), and the said [*testator*] thereby appointed [*trustees*] to be the executors thereof.

of codicils;

AND WHEREAS the said [*testator*] duly made and executed two several codicils dated respectively the —— day of ——, and the —— day of ——, to his said will, and thereby gave certain specific and pecuniary legacies, but did not otherwise alter his said will.

of death of testator and probate of will;

AND WHEREAS the said [*testator*] died on the —— day of ——, without having revoked or altered the said will, except so far as the same was altered by the said codicils, and the said will and codicils were on the —— day of —— proved in the Principal Probate Registry by the said [*trustees*].

of payment of funeral expenses, &c. (*h*);

AND WHEREAS all the [estate duty and other duties which became payable on the death of the said [*testator*], and] the funeral and testamentary expenses and debts of the said [*testator*],

(*g*) As to the personal representative's power of appropriation and the necessary consents to it, see Ad. of E. A. 1925, s. 41.

(*h*) If the testator died after 1st of August, 1894, payment of estate and other duties should be mentioned: see Finance Act, 1894, s. 24.

VI. OF SEPARATE SETS OF TRUSTEES OF DISTINCT SHARES.

and the legacies bequeathed by his said will and codicils have [long since] been fully paid and satisfied, and all the annuities given by the said will have ceased by the deaths of the respective annuitants.

of sale and conversion of testator's estate;

AND WHEREAS the real and personal estate of the said [*testator*] was sold and converted into money, and the proceeds of such sale and conversion, after making thereout the payments aforesaid, were invested in manner directed by his said will, and the present investments of the same trust premises are specified in the schedule hereto.

of death of a trustee;

AND WHEREAS the said [*one of the original trustees*] died on the —— day of ——, 19—.

of death of testator's son;

AND WHEREAS the said [*testator's son* C. B.] died, &c., leaving issue him surviving two sons and three daughters, namely, &c., all of whom are now living, being infants and unmarried.

of death of last surviving trustee;

AND WHEREAS the said [*last surviving trustee*] died on the —— day of ——, 19—, having by his will (which was duly proved in the District Probate Registry at ——) appointed the said [*representative*] to be the sole executor thereof.

of appropriation of trust property;

AND WHEREAS the investments specified in the first part of the said schedule, forming one equal moiety or half share of the trust premises now subject to the trusts of the said will, have been appropriated by the said [*representative*], with the consent of the said E. D. (*i*), to be held upon the trusts declared by the said will for the benefit of the issue of the said C. B., deceased, as therein mentioned; and the investments specified in the second part of the said schedule, forming the other moiety or half share of the said trust premises, have been appropriated by the said [*representative*], to be held upon the trusts declared by the said will for the benefit of the said E. D. and F. D., her husband, and of her issue, as therein mentioned.

AND WHEREAS the several stocks, funds, shares, and securities specified in the first part of the schedule hereto are intended to be forthwith transferred into the joint names of the said [*trustees of first share*], and in the second part of the schedule hereto into the joint names of the said [*trustees of second share*].

of desire to appoint

AND WHEREAS the said [*representative, tenant for life and her husband*], respectively, are desirous that separate trustees shall

(*i*) See *ante*, p. 92, note (*g*).

be appointed of the several parts of the trust premises so held on trusts distinct from those relating to the other parts of the said trust premises as hereinbefore is mentioned.

VI. OF SEPARATE SETS OF TRUSTEES OF DISTINCT SHARES.

NOW THIS DEED WITNESSETH as follows:—

separate sets of trustees.

Appointment of trustees of one share.

1. In pursuance of the said desire and in exercise of the power for this purpose given to him by the statute in that behalf, and of every or any other power enabling him, he the said [*representative*], with the consent of the parties hereto of the second part, hereby appoints the said [*trustees of first share*] to be the trustees of the said will in the place of the said [*deceased trustees*] so far as relates to the one equal moiety or half share of the said trust premises so directed by the said will to be held as aforesaid upon trust for the benefit of the said C. B., deceased, and his issue, as therein mentioned.

Appointment of trustees of the other share.

2. In further pursuance of the said desire and in exercise of the power for this purpose given to him by the statute in that behalf, and of every or any other power enabling him, with the consent of the parties hereto of the second part, he the said [*representative*] appoints the said [*trustees of second share*] to be the trustees of the said will in the place of the said [*deceased trustees*] so far as relates to the one other equal moiety or half share of the said trust premises so directed by the said will to be held as aforesaid for the benefit of the said E. D., and F. D., her husband, and of her issue, as therein mentioned.

3. The said [*trustees of the first share*] and the said [*trustees of the second share*] respectively hereby consent to act as and be trustees of the said will so far as relates to the several moieties of the trust premises so held on distinct trusts as aforesaid.

Vesting declaration (*k*).

[4. The said [*representative*] with the assent of the said E. D. and F. D. hereby declares that all the estate and interest of him the said [*representative*] in the said trust premises, the investments and property specified in the first part of the schedule hereto, and the said trust premises so directed by the said will to be held as aforesaid for the benefit of the said C. B.,

(*k*) See *ante*, p. 84, note (*n*). Property in the trust estate which cannot pass under a vesting declaration may be vested, as formerly, by assignment. Stock Exchange investments or mortgages which form part of the trust estate will be transferred separately, and there will be a further declaration of trust.

VI. OF SEPARATE SETS OF TRUSTEES OF DISTINCT SHARES.

deceased, and his issue, shall vest in the said [*trustees of the first share*] as joint tenants, for the purposes of the trusts by the said will declared of the same moiety; and so far as relates to the other one equal moiety or half part of the said trust premises so directed by the said will to be held as aforesaid for the benefit of the said E. D. and F. D., her husband, and her issue, and the several investments representing that moiety, and which are specified in the second part of the said schedule, the same shall vest in the said [*trustees of second share*] as joint tenants, for the purposes of the trusts by the said will declared of such last mentioned moiety.]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

FIRST PART.

SECOND PART.

VII. DISCLAIMER *by a* TRUSTEE *of a* SETTLEMENT *and* APPOINTMENT *of a* NEW TRUSTEE *in his* PLACE *by the* CONTINUING TRUSTEE. VESTING DECLARATION. (*By* INDORSEMENT) (*l*).

Parties.

THIS DEED (*m*), made the —— day of ——, 19—, BETWEEN the within named [*disclaiming trustee*] of the first part; the

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(*l*) In this precedent the appointment is made by the husband and wife, but if the power of appointment is not vested in them the appointment must be made by the continuing trustee with the necessary variations, which can be adapted from Prec. III., *ante*, p. 86.

(*m*) Stamps of 10*s*. each for the disclaimer, appointment, and vesting declaration, if any; but the stamp must be adjudicated: see *ante*, pp. 56, 74. There seems to be no doubt that a "disclaiming" trustee is a "refusing" trustee within the statutory and ordinary express power, although he technically never becomes a trustee: see Preliminary Note, *ante*, p. 75. The trust estate passes to him subject to his right to disclaim: *Standing* v. *Bowring*, 31 Ch. D. 282; *Mallott* v. *Wilson*, [1903] 2 Ch. 502; but he ought not to convey the property, as that would be repugnant to his disclaimer: *Urch* v. *Walker*, 3 Mylne & Cr. 702. A trustee may disclaim by conduct, but a formal disclaimer should if possible be made.

within named [*continuing trustee*], of the second part; the within named [*husband*] and [*wife*], his wife, in the within written indenture called [*maiden name*], spinster (hereinafter called "the appointors"), of the third part; and [*new trustee*], of, &c., of the fourth part.

Recital of marriage:

WHEREAS the marriage of the said [*husband*] and [*wife*] was duly solemnized shortly after the date of the within written indenture.

of trustee's desire to disclaim;

AND WHEREAS the said [*disclaiming trustee*] has never executed the within written indenture, nor acted or interfered in the trusts thereof, and is desirous of renouncing and disclaiming the same.

of desire to appoint new trustee;

AND WHEREAS the appointors are desirous of appointing the said [*new trustee*] as trustee of the principal indenture in the place of the said [*disclaiming trustee*].

of intention to transfer stocks, &c.

AND WHEREAS it is intended that the stocks, shares, and securities now subject to the within written indenture, the particulars whereof are set out in the schedule hereto, shall forthwith be transferred by the said [*continuing trustee*] into the joint names of the said [*continuing trustee*] and [*new trustee*].

NOW THIS DEED WITNESSETH as follows:—

Disclaimer.

1. The said [*disclaiming trustee*] hereby renounces and disclaims the office of trustee of the within written indenture, and all estates, property, trusts, powers and privileges thereby given to or vested in him, either alone or jointly with any other person or persons whomsoever ["save and except that he hereby concurs in the appointment of [*new trustee*] to be a trustee in the place of him [*retiring trustee*] for the purposes of the within written indenture," or, "and refuses to concur in the appointment," &c.] (*n*).

Appointment of new trustee.

2. The appointors, in exercise of the power in that behalf given to them by the within written indenture, and of every other power them hereunto enabling (*n*), hereby appoint the said [*new trustee*] to be a trustee in place of the said [*disclaiming trustee*], and to act jointly with the said [*continuing trustee*] for the purposes of the

(*n*) It should be remembered that when, upon disclaimer by a trustee, a new trustee is appointed under statutory power, either the retiring trustee should expressly concur in the appointment, or the deed should recite his refusal so to do.

VII. OF TRUSTS OF A SETTLEMENT AND APPOINTMENT OF NEW TRUSTEE.

within written indenture, or such of the same purposes as are still subsisting and capable of taking effect.

3. [*Sect.* 40 *of the Trustee Act*, 1925, *shall not apply to this deed.*]

IN WITNESS, &c. (*o*).

THE SCHEDULE ABOVE REFERRED TO.

VIII. APPOINTMENT *of a* NEW TRUSTEE *of a* WILL *in the* PLACE *of one who has* DISCLAIMED *where the* ESTATE *has not been* REALIZED, *the* NUMBER *of* TRUSTEES *being* REDUCED (*p*).

Parties.

A DEED OF APPOINTMENT, made the —— day of ——, BETWEEN [*appointor*], of, &c., of the first part; [*acting trustee*], of, &c., of the second part; and [*new trustee*], of, &c., of the third part.

Recitals: of will; death of testator and probate;

WHEREAS [*recite will creating the trust: see* ante, *Precedent IV., p.* 87; *also death of testator and probate,* ibid.].

of death of a trustee;

AND WHEREAS the said [*one of the trustees appointed by the will*] died in the lifetime of the said [*testator*], deceased.

of renunciation of probate, &c. by disclaiming trustee;

AND WHEREAS the said [*disclaiming trustee*] renounced probate of the said will, and refused to act in the trusts thereof, and has not in any way interfered in the administration of the estate and effects of the said [*testator*] or in the execution of the trusts of the said will.

of disclaimer;

AND WHEREAS the said [*disclaiming trustee*] by a deed poll

(*o*) If the trust comprises policies or other choses in action notice should be given to the insurance office, debtors, or trustees, as the case may be.

(*p*) Stamps, two of 10*s.* each; but the stamp must be adjudicated: see *ante,* pp. 55, 74. As to a disclaiming trustee being a "refusing" trustee, see Preliminary Note, p. 75, *ante;* and as to reducing the number of trustees on an appointment under the statutory power, see T. A. 1925, s. 37 (1) (c). Under T. A. 1925, s. 39, the number of trustees may be reduced also by omitting to appoint in the place of a retiring trustee; but this must not leave the continuing trustees less than two in number, except in the case of a trust corporation, which may in this way be constituted a sole continuing trustee.

under his hand and seal dated the —— day of ——, has renounced and disclaimed all the real and personal estate and premises by the said will devised and bequeathed to him jointly with the said [*acting trustee and deceased trustee*], and all trusts, powers, and authorities vested in him the said [*disclaiming trustee*], whether jointly with the said [*acting trustee*] or otherwise, and the office of executor and trustee under the said will. VIII. IN PLACE OF ONE WHO HAS DISCLAIMED.

AND WHEREAS the estate of the said [*testator*], deceased, has not yet been fully got in, nor have his debts or the legacies given by his said will been paid or satisfied. of administration of estate;

AND WHEREAS the said [*appointor*] is desirous of appointing the said [*new trustee*] to be a trustee of the said will in the place of the said [*disclaiming trustee*] so disclaiming as aforesaid. of desire to appoint trustee.

NOW THIS DEED WITNESSETH as follows:—

1. In exercise of the power in this behalf given to him by the [joint operation of the] said will [and the statute in that behalf], and of every other power him hereunto enabling, the said [*appointor*] hereby appoints the said [*new trustee*] to be a trustee of the said will in the place of the said [*disclaiming trustee*]. Appointment of trustee.

2. PROVIDED ALWAYS, that nothing herein contained shall be taken as an assent by the said [*acting trustee*] as executor, or so as in anywise to affect his rights or powers as executor of the said will with respect to getting in or administering the estate and effects of the said [*testator*], deceased, or otherwise howsoever in relation thereto. Saving rights of continuing trustee as executor.

IN WITNESS, &c.

IX. APPOINTMENT *of new* TRUSTEES *of a* SETTLEMENT *under a* POWER *vested in a* LUNATIC.

A DEED OF APPOINTMENT, made the —— day of ——, 19—, BETWEEN [A.], a person of unsound mind so duly found by inquisition, acting by [B.], of ——, the duly appointed committee of his estate, [*or, as to a lunatic not so found*], a person of unsound mind not so found by inquisition, acting by [B.], of ——, the person appointed to exercise the powers of a committee of his estate, of the one part; and [C.], [D.] and [E.]

IX. UNDER POWER VESTED IN LUNATIC.

[*new trustees*], of the other part. [*Recite power, in settlement, to appoint new trustees on death of trustees of settlement.*] AND WHEREAS by an order of ——, and made in the matter of the lunacy of the said [A.], it was ordered that the said [B.], as such committee as aforesaid, should be at liberty to exercise the power vested in him as hereinbefore recited of appointing the said [C.], [D.] and [E.] to be trustees of the said settlement in the place of the said —— and ——, and to vest any estate or interest in the property subject to the trusts of the said settlement in the said [C.], [D.] and [E.]; and that the said [B.], as such committee as aforesaid, should also be at liberty in his own name and on his own behalf to execute all such deeds and instruments as he might in his absolute discretion think necessary and proper, all of which such deeds and instruments the Master in Lunacy should first settle and approve.

Order in lunacy.

Approval of Master.

AND WHEREAS in pursuance of such order as aforesaid the Master in Lunacy has settled and approved these presents as a deed proper to be executed in pursuance of the said order, and his seal has accordingly been affixed in the margin hereof in testimony of such approval.

Witnesseth.

NOW THIS DEED WITNESSETH that, in pursuance of the said order, the said [A.], acting by the said [B.] as such committee as aforesaid, and in exercise of the power for this purpose given by the said settlement to the said [A.], and of every or any power enabling him in this behalf, doth hereby appoint the said [C.], [D.] and [E.] to be trustees in the place of [*deceased trustees*] for the purposes of the said settlement, or such of the same as are still subsisting and capable of taking effect.

IN WITNESS, &c.

X. APPOINTMENT *by* EXECUTORS *of* TRUSTEES *of* INFANTS' PROPERTY *under sect.* 42 *of Administration of Estates Act,* 1925 (*q*).

A DEED OF APPOINTMENT, made the —— day of ——, 19—, BETWEEN [A.] and [B.] [*executors*], of the one part; and [C.] and [D.] [*trustees*], of the other part.

(*q*) On an appointment of this kind, the executors may "execute or

X. UNDER S. 42 OF A. E. A. 1925.

WHEREAS by his will dated the —— day of ——, [E.], late of ——, deceased, appointed the said [A.] and [B.] to be executors thereof, and thereby devised to [F.] therein mentioned the freehold property specified in the schedule hereto.

AND WHEREAS the said [E.] died on the —— day of ——, and his said will was duly proved by the said [A.] and [B.] on the —— day of ——.

AND WHEREAS the said [F.] is now an infant aged —— years, and the said [A.] and [B.] are desirous of appointing the said [C.] and [D.] to be trustees of the property mentioned in the schedule hereto for the purposes of the Settled Land Act, 1925, and of the statutory provisions as to the management of land during a minority for and on behalf of the said [F.].

NOW THIS DEED WITNESSETH that, in pursuance of the said desire and in exercise of the power in that behalf given them by sect. 42 of the Administration of Estates Act, 1925, and of any and every other power them thereunto enabling, the said [A.] and [B.] hereby appoint the said [C.] and [D.] to be trustees of the freehold property specified in the schedule hereto for all the purposes of the Settled Land Act, 1925, and of the statutory provisions as to the management of land during a minority for and on behalf of the said [F.].

IN WITNESS, &c.

THE SCHEDULE.

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do any assurance or thing requisite for vesting such devise (or) legacy . . . in the trustees": see Ad. of E. A. 1925, s. 42.

"New trustee," for the purposes of sect. 40 of the T. A. 1925, includes an additional trustee: see sect. 68 (17) of the Act; but not an additional trustee appointed by an executor under Ad. of E. A. 1925, s. 42.

By sect. 36 of that Act, a personal representative may assent to the vesting of real estate in any person entitled to it, as a beneficiary or as a trustee, by devise, bequest, devolution, appropriation or other means. Thus, when an appointment of the present kind is made, a vesting assent should be used to vest the freeholds in the trustees. This form can be easily adapted to meet the case of a legacy to an infant, in which case the references to the S. L. A. and management of land during a minority will be unnecessary.

XI. OF PROCEEDS OF SALE OF REAL ESTATE.

XI. APPOINTMENT *of* NEW TRUSTEE *of* SETTLEMENT *of* MONEY *to be* RAISED *by* SALE *of* REAL ESTATE *conveyed by* DEED *of even date on* TRUST *for* SALE, *with* DECLARATION *of* TRUST *by* REFERENCE *to* SETTLEMENT *of* PROCEEDS.

A DEED OF APPOINTMENT, made the —— day of ——, BETWEEN [*surviving trustee*], of ——, and [*new trustee*].

Recitals;

WHEREAS by an indenture of settlement (hereinafter called the settlement), made the —— day of ——, in consideration of the marriage shortly afterwards solemnised between the said [A.] and [B.], trusts were declared of the net proceeds of the sale of certain freehold and copyhold property conveyed and covenanted to be surrendered to the use respectively of the said [C.] and [D.], and their heirs, by an indenture of even date with the settlement, and therein recited, and hereinafter called the conveyance on trust for sale, and of the rents and profits until sale.

AND WHEREAS part of the freehold property conveyed by the conveyance on trust for sale was on the —— day of —— sold pursuant to such trust for sale.

Investment of proceeds of sale.

AND WHEREAS on the —— day of ——, the said [C.] and [D.] invested the proceeds of such sale, which after payment of costs and duty amounted to £——, in the purchase in their names of the sum of £—— Conversion Loan.

[*Recite deaths of* [*A.*], [*B.*] *and* [*D.*]].

Deed of even date appointing new trustees of conveyance.

AND WHEREAS by a deed of even date with and made between the same parties as are parties to these presents, the said [C.] has duly appointed the said [*new trustee*] to be a trustee of the conveyance on trust for sale in the place of the said [D.].

Desire to appoint.

AND WHEREAS the said [C.] is desirous of appointing the said [*new trustee*] to be a trustee also of the settlement in the place of the said [D.].

AND WHEREAS it is intended that the said sum of stock should be forthwith transferred into the names of the said [C.] and [*new trustee*].

Appointment.

NOW THIS DEED WITNESSETH [*continue as in Form IX.*].

IN WITNESS, &c.

XII. APPOINTMENT *by* SUPPLEMENTAL DEED *of* NEW TRUSTEE *of* DEED *of even date with* MARRIAGE SETTLEMENT CONVEYING *and* COVENANTING *to* SURRENDER FREEHOLDS *and* COPYHOLDS *to* TRUSTEES *on* TRUST *for* SALE, PART *of* PROPERTY *having been* SOLD.

A DEED OF APPOINTMENT, made the —— day of ——, 19—, BETWEEN [A.] [*surviving trustee*], and [B.] [*new trustee*], AND SUPPLEMENTAL to an indenture (hereinafter called the conveyance on trust for sale) dated, &c., whereby in consideration of the marriage shortly thereafter solemnised between the said [C.] and [D.], the freehold property enumerated in the —— schedules hereto was assured to the use of the said [A.] and [E.] in fee simple upon the trusts thereinafter expressed, and the property mentioned in the —— schedule hereto (then copyhold of the manse of ——), but now enfranchised under the Law of Property Act, 1922, as amended by the Law of Property (Amendment) Act, 1924), was covenanted to be surrendered to the use of the said [A.] and [E.], and their heirs, upon the trusts thereinafter expressed, and declaring also that the said [A.] and [E.], their heirs, executors, administrators and assigns, should, at the request or discretion therein stated, sell the said freehold and copyhold property in manner thereinafter appearing, and should stand possessed of the net moneys arising from such sale and of the net rents and profits thereof, or of the unsold parts thereof for the time being (after paying expenses as therein mentioned), upon trusts to be declared concerning the same by an indenture (hereinafter called the settlement) of even date with and recited in the conveyance on trust for sale. WHEREAS the said copyhold property was on the —— day of ——, duly surrendered to the use of the said [A.] and [E.], and their heirs, in pursuance of the covenant in that behalf contained in the conveyance on trust for sale, and the said [A.] and [E.] were on the same day duly admitted thereto. AND WHEREAS the property mentioned in the —— schedule hereto was on the —— day of —— sold by the said [A.] and [E.] with the consent of the said [C.] and [D.], and was conveyed to the purchaser thereof in execution of the trusts of the conveyance on trust for sale.

Surrender and admittance.

Sale.

[*Death of* [*C.*], [*D.*] *and* [*E.*]; *desire to appoint* [*B.*] "*trustee*

XII. OF MARRIAGE SETTLEMENT.

of conveyance on trust for sale and also of settlement" in place of [E.].

And whereas it is intended that the appointment of the said [B.] to be a trustee of the settlement in the place of the said [E.] shall be effected by a deed of even date with, and made between the parties to these presents, NOW THIS DEED WITNESSETH [*continue as in Form IX., p.* 98].

XIII. APPOINTMENT (*r*) *of* Three New Trustees *of a Strict Settlement of* Freehold Estate, *in the place of a* Lunatic Trustee, *of a* Trustee *who is residing abroad, and of a* Bankrupt Trustee. (*By Separate Deed.*)

Parties.

THIS DEED OF APPOINTMENT (*s*), made the —— day of ——, 19—, Between [*tenant for life and donee of the power*], of, &c., of the first part; [*continuing trustee*], of, &c., of the second part; and [*first new trustee*], of, &c., and [*second new trustee*], of, &c., and [*third new trustee*], of, &c., of the third part.

Recitals: of settlement (*t*).

Whereas by an indenture of settlement dated the —— day of ——, 19—, and made between, &c. [*parties*], the messuage or mansion-house known as —— Hall and the several manors, messuages, farms, lands and hereditaments, situate in the parishes of —— and —— respectively, in the county of ——, in the same indenture more particularly described, were conveyed to the uses, upon the trusts, and with, under and subject to the powers, pro-

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(*r*) See *ante,* p. 74.

(*s*) See Preliminary Note, *ante,* p. 74. By T. A. 1925, s. 38, a statement (in an instrument operative after the Act comes into force appointing new trustees) that a trustee has been out of the United Kingdom for twelve months, or refuses or is unfit to act, is conclusive evidence, in favour of a purchase of legal estate, of the matter stated. Stamps, two of 10*s.* each. The stamp must be adjudicated: see *ante,* p. 74.

(*t*) Where the instrument creating the trust is a deed, the appointment of new trustees is usually effected by endorsed or supplemental deed, forms of which are given in preceding and following precedents. In the case of new trustees of wills, the appointment must, of course, be effected by a separate deed reciting the will.

visions and declarations therein limited, declared and contained of or concerning the same premises, whereby the said [*tenant for life*] is now tenant for life thereof without impeachment of waste, with divers remainders over.

And by the same indenture it was declared that the statutory power of appointing new trustees thereof should be vested in and exerciseable by the said [*tenant for life*] during his life, and afterwards as therein mentioned.

of sales by tenant for life;

And whereas the said [*tenant for life*], in exercise of his statutory power of sale under or by virtue of the Settled Land Act, 1925, s. 38, has lately sold certain of the hereditaments comprised in the said indenture of settlement, and the proceeds of such sale have been laid out partly in the purchase of other hereditaments, which by an indenture dated the —— day of ——, 19—, and made between [*parties*], have been conveyed upon trusts corresponding to the uses of (*u*) the said indenture of settlement, and partly in improvements of the said settled lands, in accordance with the provisions of the Act hereinbefore referred to.

And whereas under or by virtue of the Settled Land Act, 1925, and a vesting deed dated the —— day of ——, and made pursuant to the said Act, the said settlement now constitutes the trust instrument for the purposes of the Act.

of lunacy of one trustee;

And whereas the said [*lunatic trustee*] is of unsound mind and has been so found by inquisition dated, &c. [*or*, "but has not been so found by inquisition"], and is now confined in a lunatic asylum.

of residence abroad of another trustee (*x*).

And whereas the said [*trustee resident abroad*] has remained out of the United Kingdom for more than twelve months and still remains abroad.

of bankruptcy of third trustee (*x*);

And whereas by an order of the High Court of Justice in Bankruptcy dated, &c., the said [*bankrupt trustee*] was adjudicated a bankrupt.

(*u*) As a consequence of the repeal of the Statute of Uses by L. P. A. 1925, sched. 7, from and after January 1st, 1926, any statutory or other provision that land be settled to uses is to be effective as a direction to settle the land upon corresponding trusts.

(*x*) It is advisable that evidence should be preserved of the events which give rise to the power to appoint new trustees, such as lunacy, resi-

XIII. OF FREEHOLDS.

of desire to appoint new trustees.

AND WHEREAS the said [*tenant for life*] is desirous of appointing the said [*first new trustee*], [*second new trustee*], and [*third new trustee*], to be trustees of the said indenture of settlement in the place of the said [*lunatic trustee*], [*trustee resident abroad*], and [*bankrupt trustee*] respectively.

NOW THIS DEED WITNESSETH as follows:—

Appointment of new trustee.

1. The said [*tenant for life*], in exercise of the power for this purpose by the joint operation of the said settlement and the statute in that behalf given to him, and of all other powers, if any, him hereunto enabling, hereby appoints the said [*first new trustee*], [*second new trustee*], and [*third new trustee*] respectively, to be trustees of the said settlement in the place of the said [*lunatic trustee*], [*trustee resident abroad*], and [*bankrupt trustee*] respectively, and to act jointly with the said [*continuing trustee*], for the purposes of the said settlement, or such of the same purposes as are still subsisting and capable of taking effect (*y*).

XIV. APPOINTMENT *of a* NEW TRUSTEE *of a* SETTLEMENT *created by* WILL *for the purposes of the* SETTLED LAND ACT, 1925, *where the original* TRUSTEES *have been appointed by the* COURT (*z*).

Parties.

A DEED OF APPOINTMENT (*a*), made the —— day of ——, BETWEEN [*surviving trustee*], of, &c., and [*surviving*

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dence abroad, &c. It is, of course, unlikely that there should be a lunatic trustee, a trustee abroad, and a bankrupt trustee at the same time in the same trust, but the precedent is framed so as to show the recitals which would apply to each of these cases.

(*y*) A memorandum of the names and addresses of the persons for the time being trustees of the settlement for purposes of S. L. A. 1925, must be endorsed on or annexed to the last or only principal vesting deed: see T. A. 1925, s. 35 (2); and a deed of declaration must be executed as required by S. L. A. 1925, s. 35: see p. 76, *ante*.

(*z*) For the application of the S. L. A. 1925, to trustees for the purposes of the Act, see sect. 64 of the Act. A memorandum must be endorsed and a deed of declaration executed as required by S. L. A. 1925, s. 35, see Preliminary Note, p. 76, *ante*.

(*a*) Stamp, 10*s*.

trustee], of, &c., of the first part; [*tenant for life*], of, &c., of the second part; and [*new trustee*], of, &c., of the third part. XIV. FOR PURPOSES OF SETTLED LAND ACT.

WHEREAS [*testator*], late of, &c., deceased, duly made and executed his will, dated, &c., and thereby gave and devised all his messuages, lands and hereditaments, situate at, &c., To the use of the said [*tenant for life*], without impeachment of waste, with divers remainders over, but the said will contained no power of or trust for sale of the hereditaments thereby settled [*if the testator died after* 1882, *add:* "or of any other hereditaments thereby devised, and no appointment of trustees for the purposes of the Settled Land Acts, 1882 to 1890"]. Recitals: of will;

AND WHEREAS the said [*testator*] died on the —— day of ——, without having revoked or altered his said will, and seised in fee simple in possession of the said hereditaments and premises thereby devised, and the said will was proved in the Principal Probate Registry on the —— day of ——. of death of testator;

AND WHEREAS by an order of the Chancery Division of the High Court of Justice, made on the —— day of ——, by Mr. Justice ——, in the matter of ——, and of the Settled Land Acts, 1882 to 1890, upon the application of the said [*tenant for life*], the said [*surviving trustees*] and [*deceased trustee*], late of, &c., deceased, were appointed to be trustees of the settlement created by the said will for the purposes of the said Acts [*here recite particulars of the investment of capital money*]. of appointment of trustees by the Court.

AND WHEREAS under or by virtue of the Settled Land Act, 1925, and of a vesting deed dated ——, and made pursuant to the said Act, the said will now constitutes the trust instrument for the purposes of the said Act of the settlement thereby made.

AND WHEREAS the said [*deceased trustee*] died on the —— day of ——. of death of trustee;

AND WHEREAS the said [*continuing trustees*] are desirous of appointing the said [*new trustee*] to be a trustee in the place of the said [*deceased trustee*], and the said [*tenant for life*] has consented to such appointment. of desire to appoint new trustee.

NOW THIS DEED WITNESSETH that, for effectuating the said desire the said [*continuing trustees*], in exercise of the powers given to them by the statute in that behalf, and of every other power them enabling, do hereby, with the consent and approbation of the said [*tenant for life*] (testified by his executing these presents), appoint the said [*new trustee*] to be Appointment of new trustee.

XIV. FOR PURPOSES OF SETTLED LAND ACT.

a trustee of the settlement created by the said will, for the purposes of the Settled Land Act, 1925, in the place of the said [*deceased trustee*], and to act jointly with them the said [*continuing trustees*], for the purposes of the said Act (*b*).

IN WITNESS, &c.

XV. APPOINTMENT *by* SUPPLEMENTAL DEED *of* NEW TRUSTEE *of Strict Settlement of* FREEHOLDS *and* LEASEHOLDS *made before* SETTELD LAND ACT, 1925, *came into force* (*c*).

A DEED OF APPOINTMENT, made the —— day of ——, 19—, BETWEEN [A.] [*tenant for life and donee of power of appointment*], of the first part; [B.] [*retiring trustee*], of the second part; [C.] and [D.] [*continuing trustees*], of the third part; and [E.] [*new trustee*], of the fourth part.

SUPPLEMENTAL to an indenture (hereinafter called the principal indenture) dated the —— day of ——, which now is or constitutes, for the purposes of the Settled Land Act, 1925, the trust instrument of a settlement made in contemplation of a marriage between the said [A.] and [F.] shortly afterwards solemnised, under or by virtue whereof, and of a vesting deed dated the —— day of ——, and made pursuant to the said Act, certain freehold and leasehold property situate at —— is now vested in the said [A.] upon trusts, whereunder the said [A.] is tenant for life in possession thereof, and whereby the said [B.], [C.] and [D.] were appointed to be trustees thereof for all the purposes of the Settled Land Acts, 1882 to 1890 [and of sect. 42 of the Conveyancing Act, 1881], and whereby the said [A.] was given power to appoint new trustees thereof.

WHEREAS the schedule hereto contains particulars of the investments and moneys now subject to the trusts of the principal

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(*b*) As to the powers of trustees appointed by the Court, see T. A. 1925, s. 43. The consent of the tenant for life is desirable, but not absolutely necessary, as the appointment is made under the T. A. 1925, ss. 36, 37, 64, and not under any power conferred by the S. L. A.

(*c*) As to a memorandum of the names and addresses of the trustees for the time being for the purposes of the S. L. A. 1925, see Preliminary Note, p. 76, *ante*.

indenture, and representing capital money of the said settlement, all of which investments and moneys now stand in the names of the said [B.], [C.] and [D.].

AND WHEREAS the said [B.] is desirous of being discharged from the trusts of the said principal indenture, and the said [*donee*] is desirous of appointing the said [E.] to be a trustee thereof in the place of the said [B.].

AND WHEREAS the investments and cash specified in the schedule hereto are intended to be transferred forthwith by the said [B.], [C.] and [D.] into the joint names of the said [C.], [D.] and [E.].

NOW THIS DEED WITNESSETH, and it is hereby agreed and declared as follows, namely:—

1. The said [A.] hereby appoints the said [E.] to be a trustee of the principal indenture, in place of the said [B.], for all the purposes for which the said [B.] was appointed a trustee of the principal indenture, or such of those purposes as still subsist and can take effect (*d*).

2. The right to recover and receive mortgage debts specified in the schedule hereto shall not be vested by this deed in the said [C.], [D.] and [E.], but such mortgage debts, together with securities for them, are intended to be separately transferred to the said [C.], [D.] and [E.].

IN WITNESS, &c.

(*d*) By S. L. A. 1925, s. 31, trustees appointed in this way are trustees for the purposes of the Act of (i) any compound settlement constituted by the instrument of which they are expressly appointed trustees, and (ii) any later instruments; by sect. 32 they are also trustees of any settlement taking effect by reference to such settlement, save where Settled Land Act trustees, for purposes of S. L. A. 1882 to 1890, or 1925, are appointed in the settlement by reference; and by sect. 91 of the Act, estates settled upon the same limitations by different settlements can be treated as one aggregate estate.

XVI. OF STRICT SETTLEMENT OF FREEHOLDS AND LEASEHOLDS.

XVI. SUPPLEMENTAL DEED *of* APPOINTMENT *of* NEW TRUSTEE *of Strict Settlement of* FREEHOLDS *and* LEASEHOLDS *made after* SETTLED LAND ACT, 1925, *came into force* (*e*).

A DEED OF APPOINTMENT, made the —— day of ——, 19—, BETWEEN [A.] [*tenant for life and donee of power of appointing new trustees*], of the first part; [B.] [*retiring trustee*], of the second part; [C.] and [D.] [*continuing trustees*], of the third part; and [E.] [*new trustee*], of the fourth part; AND SUPPLEMENTAL to a trust instrument dated the —— day of ——, and made between —— and —— (being the trust instrument of a settlement made in contemplation of the marriage shortly afterwards solemnised between the said [A.] and [F.]), whereby trusts were declared of certain freehold and leasehold property situate at ——, whereunder the said [A.] is tenant for life in possession thereof, and whereby the said [B.], [C.] and [D.] (being the persons constituted the trustees thereof by the said trust instrument) were also appointed trustees of the said settlement for all the purposes of the Settled Land Act, 1925 [and for the purpose of management of land during a minority], and power was given to the said [A.] during his life to appoint new trustees thereof and also of the said settlement.

WHEREAS [*particulars of investments of capital money*].

AND WHEREAS [*desire of* [*B.*] *to retire* (*see last Precedent*)].

AND WHEREAS [*desire of* [*A.*] *to appoint new trustees*].

AND WHEREAS [*intention to transfer investments*].

NOW THIS DEED WITNESSETH, and it is hereby agreed and declared as follows:—

1. The said [A.], in exercise of the power conferred on him for this purpose by the said trust instrument, hereby appoints the said [E.] to be a trustee of the said trust instrument in the place of

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(*e*) See T. A. 1925, s. 64; endorsed on the last or only principal vesting instrument, or annexed thereto, there must be a memorandum of the names and addresses of those who are for the time being trustees of the settlement for the purposes of the S. L. A. 1925 (T. A. 1925, s. 35 (2)); and in accordance with sect. 35 of the S. L. A. 1925, a deed of declaration must be executed.

the said [B.] for the several purposes for which the said [B.] was appointed a trustee by the said trust instrument.

2. [*Clause limiting operation of implied statutory vesting declaration, p.* 96].

IN WITNESS, &c.

XVII. DEED *of* DECLARATION, SUPPLEMENTAL *to* PRINCIPAL VESTING DEED, *made pursuant to sect.* 35 *of* SETTLED LAND ACT, 1925.

A DEED OF DECLARATION, made the —— day of ——, 19—, BETWEEN [A.] [*donee of power of appointing new settlement trustees*], of the first part; [B.], [C.] and [D.] [*present trustees of the settlement for the purposes of the Settled Land Act*, 1925], of the second part; and [E.] [*retiring trustee*], of the third part; AND SUPPLEMENTAL to a principal vesting deed (hereinafter called the principal deed) dated the —— day of ——, whereby certain freehold [and leasehold] property then subject to the limitations and trusts of an indenture of settlement dated the —— day of ——, and made between —— and ——, was vested in the said [A.] upon the trusts and subject to the powers and provisions upon and subject to which as a trust instrument of even date therewith the same ought to be held.

WHEREAS by a deed of appointment dated the —— day of ——, the said [A.] duly appointed the said [D.] to be a trustee of the said trust instrument for all the purposes of the Settled Land Act, 1925, in the place of the said [E.] (*f*).

NOW THIS DEED WITNESSETH, and it is hereby agreed and declared, that for giving effect to the requirements of the Settled Land Act, 1925, the said [B.], [C.] and [D.] are the trustees of the settlement subsisting under or by virtue of the Principal Indenture and the said indenture of settlement for all the purposes of the said Act.

IN WITNESS, &c.

(*f*) This is conclusive evidence of fact stated in favour of a purchaser of legal estate. This declaration must be endorsed on or annexed to the principal vesting deed: see S. L. A. 1925, s. 35.

XVIII. DEED OF DECLARATION.

XVIII. DEED *of* DECLARATION SUPPLEMENTAL *to* PRINCIPAL VESTING DEED *made pursuant to sect.* 35 *of* SETTLED LAND ACT, 1925 (*g*).

A DEED OF DECLARATION, made the —— day of ——, 19—, BETWEEN [A.] [*donee of power of appointing new trustees of settlement*], of the first part; [C.], [D.] and [E.] [*present trustees of settlement for purposes of Settled Land Act,* 1925], of the second part; and [B.] [*retiring trustee*], of the third part; AND SUPPLEMENTAL to a principal vesting deed (hereinafter called the principal deed) dated the —— day of ——, whereby certain freehold [and leasehold] property was vested in the said [A.] upon the trusts of a trust instrument of even date therewith.

WHEREAS by an appointment of new trustees dated, &c., the said [C.], [D.] and [E.] were appointed trustees of the said trust instrument for the purposes of the Settled Land Act, 1925.

NOW THIS DEED WITNESSETH, and it is hereby declared, that for giving effect to the requirements of the Settled Land Act, 1925, the said [C.], [D.] and [E.] are the trustees of the settlement effected by the principal deed and the said trust instrument for all the purposes of the said Act.

IN WITNESS, &c.

XIX. APPOINTMENT *of* NEW TRUSTEE *of* WILL *of* REAL ESTATE *for purposes of* SETTLED LAND ACT, 1925, *where* ORIGINAL TRUSTEES *were* TRUSTEES *for purposes of* SETTLED LAND ACTS, 1882—1890 (*h*).

A DEED OF APPOINTMENT, made the —— day of ——, 19—, BETWEEN [A.] [*donee of power*]; [B.] [*retiring trustee*]; [C.] and [D.] [*continuing trustees*]; [E.] [*new trustee*].

WHEREAS [F.], late of ——, deceased, duly made his will dated the —— day of ——, and thereby devised certain freehold property situate at ——, to uses whereunder the said [A.] became

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(*g*) See notes (*y*) and (*c*), Precedents XIII. and XVI.

(*h*) A memorandum and deed of declaration are necessary: see S. L. A. 1925, s. 35; the form of the deed of declaration will be similar to that of Precedent XVIII. See also p. 76 as to memorandum.

and now is tenant for life in possession thereof, and thereby appointed the said [B.], [C.] and [D.] to be trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890, and declared that the power of appointing a new trustee or new trustees thereof should vest in the said [A.] during his life.

AND WHEREAS [*recite death of testator and probate*].

AND WHEREAS [*recite assent of executors if not also trustees*].

AND WHEREAS under or by virtue of the Settled Land Act, 1925, and of a vesting deed dated the —— day of ——, and made pursuant to the said Act, the said will now constitutes the trust instrument, for the purposes of the said Act, of the settlement thereby made.

AND WHEREAS [*recite particulars of investments of capital money*].

AND WHEREAS [*recite desire of [B.] to retire*].

AND WHEREAS [*recite desire of [A.] to appoint new trustee*].

AND WHEREAS [*recite intention to transfer investments*].

NOW THIS DEED WITNESSETH, and it is hereby agreed and declared as follows:—

1. The said [A.] hereby appoints the said [E.] to be a trustee of the said will in the place of the said [B.] for all the purposes for which the said [B.] was appointed a trustee by the said will, or such of the same purposes as are still subsisting and capable of taking effect (*h*).

2. [*Clause limiting operation of implied statutory vesting declaration, p.* 96].

(*h*) See note (*h*) previous page.

XX. OF SETTLEMENT OF LAND.

XX. APPOINTMENT *by* EXECUTOR (*i*) *pursuant to sect.* 30 *of* SETTLED LAND ACT, 1925, *of* ADDITIONAL TRUSTEE *of* SETTLEMENT *of* LAND *created by the* WILL *of a* TESTATOR DYING *after the* ACT *came into force* (*k*).

A DEED OF APPOINTMENT, made the —— day of ——, 19—, BETWEEN [A.] [*sole executor and trustee of will*], of the one part; and [B.] [*additional trustee*], of the other part.

WHEREAS [*recite disposition in will, creating settlement, and appointing* [*X.*] *sole executor and trustee*], but the said will contained no power of or trust for sale of the said property, or of any other property thereby devised, and no appointment of trustees for the purposes of the Settled Land Act, 1925.

AND WHEREAS [*recite death of testator and probate*].

AND WHEREAS for the purpose of giving effect to the requirements of sect. 30 of the Settled Land Act, 1925, the said [A.] is desirous of appointing the said [B.] to be an additional trustee of the settlement of the said property created by the said will to act with him for the purposes of the said Act.

(*i*) For the purposes of a settlement arising under a will or under an intestacy, the personal representatives are, by sect. 30 (3) of the Act, constituted trustees for the purposes of the Act if there would otherwise be none, and so remain until such trustees are appointed. If, however, there is only one such trustee, not being a trust corporation, such trustee has power, which he must exercise, to appoint another trustee to act with him. Further, since the provisions of the T. A. 1925 as to the appointment of new trustees and the vesting of trust property are to apply, severance of trusteeship will take place where the same will settles land and personalty on different trusts, and the trustees of the will are not constituted trustees for the purposes of S. L. A. 1925, s. 30 (1). Their trusteeship powers for purposes of the Act remain with personal representatives although new or additional trustees of the will be appointed; and if, under part (v) of the same sub-section, a personal representative remaining in the trust appoints a new or additional trustee when the other personal representative dies or retires, such trusteeship need not end at any fixed point of time.

(*k*) Where a testator dies before January 1st, 1926, and the personal representative as such still has the trust property vested in him, the section still applies. A vesting assent to vest the trust property in the tenant for life or statutory owner will, under S. L. A. 1925, s. 8 (4b), and sched. 2, para. 2, be required here also, and sect. 6 of the Act constitutes the will the trust instrument for the purposes of the Act.

NOW THIS DEED WITNESSETH, and it is hereby agreed and declared, that in pursuance of the said desire, and in exercise of the power by the said Act given to him in that behalf, and of every and any other power him thereunto enabling, the said [A.] hereby appoints the said [B.] to be a trustee of the settlement created by the said will for the purposes of the Settled Land Act, 1925, to act jointly with the said [A.] for the purposes lastly hereinbefore mentioned.

IN WITNESS, &c. (*l*).

XXI. APPOINTMENT *of the* PUBLIC TRUSTEE *as* SOLE TRUSTEE *of a* SETTLEMENT *in the* PLACE *of* TWO RETIRING TRUSTEES (*m*). (*By* INDORSEMENT.)

A DEED OF APPOINTMENT (*n*), made the —— day of ——, BETWEEN the within named [*appointor*], [now of, &c.], of the first part; the within named [*retiring trustees*], of, &c., of the second part; and the Public Trustee, of the third part. Parties.

WHEREAS the property subject to the trusts of the within written indenture now consists of £—— Two and a Half per Cent. Consolidated Stock standing in the names of the [*retiring trustees*]. Recitals: of present state of trust property;

AND WHEREAS the said [*retiring trustees*] are desirous of being discharged from the trusts of the within written indenture, and of desire of trustees to retire, &c.;

(*l*) As to the necessary memorandum, see T. A. 1925, s. 35. But there will be no need for the deed of declaration required by S. L. A. 1925, s. 35, since no new trustee of the will is appointed.

(*m*) See Public Trustee Act, 1906, s. 5. The consent of the Public Trustee to act must be obtained: *Re Shaw*, [1913] W. N. 141. See sect. 2 for his duties and powers. He cannot be appointed if the instrument creating the trust contains a direction to the contrary, unless the Court otherwise order: see P. T. A. 1906, s. 5 (3). The Public Trustee cannot accept a trust which is solely for religious or charitable purposes: see P. T. A. 1906, s. 2. Notice of the proposed appointment must be given to the beneficiaries, and the Court may make an order prohibiting the appointment where it considers it expedient to do so: see P. T. A. 1906, s. 5 (4); *Re Firth*, [1912] 1 Ch. 806. See also Preliminary Note, *ante*, p. 79.

(*n*) Stamp, 10*s*., with further 10*s*. where there is a vesting declaration or conveyance of property. See, as to adjudication, *ante*, p. 74.

XXI. OF PUBLIC TRUSTEE AS SOLE TRUSTEE.

the appointor is desirous of appointing the Public Trustee as sole trustee in their place.

AND WHEREAS the Public Trustee has consented to act as sole trustee of the within written indenture.

of consent of Public Trustee to act;

AND WHEREAS the said £—— Two and a Half per Cent. Consolidated Stock is intended to be forthwith transferred into the name of the Public Trustee.

of intention to transfer stock.

NOW THIS DEED WITNESSETH:—

Appointment.

In exercise of the power for this purpose by [the joint operation of] the within written indenture [and the statute in that behalf] (*o*) given to him, and of every or any other power him enabling, he the said [*appointor*] hereby appoints the Public Trustee to be sole trustee of the within written indenture in the place of the said [*retiring trustees*] (*p*). [*Here add, if necessary, clauses limiting the operation of the implied statutory vesting declaration.* See K. & E., 12th ed., p. 130.]

IN WITNESS, &c.

XXII. APPOINTMENT *of the* PUBLIC TRUSTEE *as* CUSTODIAN TRUSTEE (*q*).

A DEED OF APPOINTMENT (*r*), made the —— day of ——, 19—, BETWEEN [*managing trustees*], of, &c., of the first part;

Parties.

(*o*) In this case it is supposed that the settlement contained a power to appoint new trustees, hence the reference to the joint operation of the settlement and the statute.

(*p*) The Public Trustee Act, s. 5 (1), expressly provides that though the trustees originally appointed were two or more, the Public Trustee may be appointed sole trustee, and it seems that he may be so appointed even where the settlement provides that the trustees should not at any time be less than three: see *Re Leslie,* [1911] 1 Ch. 611; followed in *Re Ardagh's Estate,* [1914] 1 I. R. 5.

(*q*) The Public Trustee is a corporation sole having an official seal (Public Trustee Act, 1906, s. 1), and holds a licence in mortmain, dated January 1, 1908. Upon his appointment as custodian trustee the trust property must be transferred to him, and if necessary, vesting orders must be made under the T. A. 1925. Any incorporated banking, or assurance, or guarantee, or trust company, or any other corporate body which is for

(*r*) Stamp, 10*s.* for appointment and further 10*s.* for conveyance, if any; but in the latter case the stamp must be adjudicated: see *ante,* p. 74.

[*beneficiary* (*s*)], of, &c., of the second part; and the Public Trustee of the third part.

XXI. OF PUBLIC TRUSTEE AS CUSTODIAN TRUSTEE.

Recitals: of will;

WHEREAS by his will, dated, &c. [*testator*], of, &c., after making certain pecuniary and specific bequests, devised and bequeathed the residue of his real and personal property to [*trustees*] upon trust for sale and conversion, and investment of the proceeds as therein mentioned, and to stand possessed of such investments upon trust to pay the income thereof to the said [*beneficiary*] during his life, and after his death as to as well the capital as the income of the said trust premises upon the trusts therein mentioned.

AND WHEREAS [*recite death of testator and probate,* ante, *p.* 91].

of desire to appoint custodian trustee;

AND WHEREAS the said [*beneficiary*] is desirous that the Public Trustee should have the custody of all securities and documents of title relating to the trust property and investments now subject to the trusts of the said will; and the [*managing trustees*] have agreed, while retaining the management of the said trust property and investments, to appoint the Public Trustee to act as custodian trustee of the said securities and documents of title which the Public Trustee has agreed to do.

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the time being empowered by Act of Parliament, charter, memorandum of association, deed of settlement, or other instrument constituting it or defining its powers, can be appointed custodian trustee of a trust by (i) one with power to appoint new trustees, (ii) order of the Court, (iii) creator of the trust; on appointment it will be entitled to act as custodian trustee under Public Trustee Rules, 1912, r. 30. As to the respective powers of the custodian trustee and the managing trustees, see sect. 4 (2) of the P. T. A. 1906. It is doubtful whether the "vesting declaration" under sect. 40 of T. A. 1925, applies to the appointment of custodian trustees. As to the appointment of banking or insurance companies or other corporate bodies as custodian trustee, see P. T. A. 1906, s. 4 (3), and P. T. Rules, 1912, set out [1912] W. N. Pt. 2, p. 173; and as to a charitable trust, see *Re Cherry's Trust,* [1914] 1 Ch. 83; 83 L. J. (Ch.) 142, in which case it was held also that even though there is no vacancy among the trustees, a custodian trustee can be appointed.

(*s*) The appointment can be made (1) by the Court, (2) by the settlor or testator on creation of the trust, or (3) by the persons having power to appoint new trustees: see P. T. A. s. 4 (1). The concurrence of beneficiaries is not necessary. The appointment can be made though no vacancy has occurred in the trusteeship: *Re Cherry,* [1914] 1 Ch. 83.

XXII. OF PUBLIC TRUSTEE AS CUSTODIAN TRUSTEE.

of delivery of securities to Public Trustee.

AND WHEREAS the said [*managing trustees*] have already handed over to the Public Trustee the securities and documents of title specified in the [first part of the] schedule hereto, and the same are now in his custody, as he hereby admits [and have agreed to hand over the documents of title specified in the second part of the schedule hereto as and when the same shall come into their possession].

NOW THIS DEED WITNESSETH as follows:—

Appointment of Public Trustee as custodian trustee.

1. The said [*managing trustees*], with the approval (hereby testified) of the said [*beneficiary*], in exercise of the power for this purpose vested in them by [the said will and] the statute in that behalf, and of every other power them enabling, hereby appoint the Public Trustee to be the custodian trustee of the said securities and documents of title mentioned in [the first part of] the schedule hereto [and of the securities and documents of title mentioned in the second part of the said schedule as and when the same shall be in the possession or power of the said [*managing trustees*]] and of all other securities and documents of title which may at any time hereafter be comprised in or form part of the said trust premises.

2. [*Conveyance to the Public Trustee by* "the managing trustees as trustees," *of any property that can be conveniently so conveyed*] (*t*).

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*t*) By sect. 4 (2) (a) of the P. T. A. 1906, the trust property is to be transferred to the "custodian trustee" as if he were a sole trustee, which may be done by the making of vesting orders under the T. A. 1925; but the management of the property and the exercise of powers or discretions is to remain vested in the "managing trustees": sect. 4 (2) (b). The custodian trustee is to have the custody of the securities and title deeds: sect. 4 (2) (c). The power of appointing new trustees is exercisable by the "managing trustees": sect. 4 (2) (f); and in determining the number of trustees for the purposes of the T. A. 1925, "the custodian trustee" is not to be reckoned: sect. 4 (2) (g). As to the termination of the trusteeship of the custodian trustee by order of the Court, see P. T. A. 1906, s. 4 (2) (i).

The exact position of a custodian trustee is given in P. T. A. 1906, s. 4 (2). He is not an ordinary trustee, nor is he a new trustee appointed within T. A. 1925, s. 40, to perform any trust, in whom property can

APPRENTICESHIP.

PRELIMINARY NOTE.

Stamps.

An instrument of apprenticeship bears a 2*s.* 6*d.* stamp, except in the case of "parish" or "charity" apprenticeships, which are exempted from duty. (See Stamp Act, 1891, Sched., tit. "Apprenticeship," and s. 25; see also Merchant Shipping Act, 1894, s. 108.)

Law as to apprenticeships.

Formerly, apprenticeship contracts had to be made by deed for a period of seven years at least (5 Eliz. c. 4), but by the Apprentices Act, 1814 (54 Geo. 3, c. 96), the requirement of seven years is repealed, and an agreement in writing is made valid and effectual, except in special cases in which it is otherwise provided by statute. (See *Kirkby* v. *Taylor*, [1910] 1 K. B. at p. 534.) As to how far an apprenticeship deed differs from an ordinary contract of service, see *De Francesco* v. *Barnum* (1890), 45 Ch. D. 430; *James* v. *Krauth* (1910), 26 T. L. R. 240.

No action lies against the apprentice upon his covenants during the apprenticeship (see *Gylbert* v. *Fletcher*, Cro. Car. 179; *Gadd* v. *Thompson*, [1911] 1 K. B. 304), but an infant may bind himself to pay, at a future date, a fair and reasonable premium for instruction. (*Walter* v. *Everard*, [1891] 2 Q. B. 369; *Gadd* v. *Thompson, supra.*) And a stipulation by the infant to do or not to do some act as deferred consideration for instruction will, if reasonable, be binding on the infant, and a negative stipulation

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be vested by vesting declaration under T. A. 1925, s. 40. With him is the custody of all securities and title deeds connected with the trust property, which are none the less to be freely accessible to the managing trustees, who may copy them or make extracts from them.

The Public Trustee may be appointed also a judicial trustee under P. T. A. 1906, ss. 2 (1) (d), and 6 (2), and under sect. 5 can be appointed an ordinary trustee, subject to the conditions in that section and in sect. 2 (4), (5).

The office of custodian trustee may be terminated by an order of the Court to that end, and if such termination is desired before all the trusts have been performed, the Public Trustee must apply for the requisite order of the Court.

of this kind may be enforced after the determination of the apprenticeship. Unreasonable provisions cannot be enforced against the infant or his parent. (See as to how far apprenticeship deeds of infants may be onerous or beneficial, *Long (Sir W. C.) & Co.* v. *Andrews*, [1909] 1 Ch. 763; *Bromley* v. *Smith*, [1909] 2 K. B. 235.) As to what is "reasonable," the same rule applies as well to apprenticeship deeds as to other contracts of service by infants. As to which, see *De Francesco* v. *Barnum*, 45 Ch. D. at p. 459; *Gadd* v. *Thompson*, *supra*, at p. 309. As to repudiation of agreement by "conduct" of the apprentice, see *Waterman* v. *Fryer*, [1922] 1 K. B. 499. As to absence of apprentice from his master's service, see *Hughes* v. *Humphreys*, 6 B. & C. 680. As to misconduct of apprentice affecting the master's covenant, see *Learoyd* v. *Brook*, [1891] 1 Q. B. 431; and *Waterman* v. *Fryer*, [1922] 1 K. B. 499, at p. 503.

An apprenticeship to a corporation is good. (See *Barnley, &c. Society* v. *Casson*, [1891] 1 Q. B. 75.)

See further, as to the law of apprenticeship, Simpson on Infants, 3rd ed., pp. 80—86; and Austin on Apprentices.

PRECEDENTS.

I. ARTICLES of Apprenticeship to a Trader. (Short Form.)

Parties.

THIS DEED (*a*), made the —— day of ——, 19—, BETWEEN [*apprentice*], of, &c., of the first part, [*father of apprentice*], of, &c., of the second part, and [*master*], of, &c., of the third part; WITNESSETH that the said [*apprentice*], of his own free will, and with the consent of his father, the said [*father*], hereby binds himself as apprentice to the said [*master*] during the term of —— years, to learn the trade and business of ——. AND the said [*father*] hereby covenants with the said [*master*] that, during the said term, the said [*apprentice*] shall honestly, faithfully, and diligently serve and obey the said [*master*], and shall not do or commit, or suffer to be done or committed, any waste, damage, or

Apprentice binds himself.

Covenants by father.

(*a*) See sect. 57 of L. P. A. 1925.
(*b*) Stamp, 2s. 6d.

injury of or to the property of the said [*master*], and shall not unlawfully absent himself from the service of the said [*master*]; AND FURTHER, that he, the said [*father*], will, at his own expense, provide the said apprentice with good and sufficient clothes, washing, medicines and medical attendance, and other necessaries, except as is hereinafter otherwise stipulated, during the said term: IN CONSIDERATION whereof, and also in consideration of the premium or sum of £ - - (*c*) now paid to the said [*master*] by the said [*father*] (the receipt whereof is hereby acknowledged), the said [*master*] hereby covenants with the said [*father*], and also with the said [*apprentice*], that he, the said [*master*], will during the said term take and receive as his apprentice, and to the best of his knowledge and ability teach and instruct in the trade and business of a ——, and all things incident thereto, the said [*apprentice*], in such manner as he, the said [*master*], now does or shall hereafter use or practise the same; and will also during the said term provide the said [*apprentice*] with good and sufficient board and lodging; and will also, from and after the expiration of the first year of the said term, pay to the said [*apprentice*] wages at the rates and in manner following, that is to say, during the second year of the said term the sum of —— per week [*or*, calendar month], and during the third year of the said term the sum of —— per week [*or*, calendar month], and during the remainder of the said term the sum of —— per week [*or*, calendar month]; and will, on the completion of the said term, if the said [*apprentice*] shall in the meantime have faithfully and diligently served his apprenticeship and in all respects properly conducted himself, indorse on this deed a certificate that the said [*apprentice*] has duly served his apprenticeship in due conformity therewith and deliver the same so indorsed to the said apprentice.

I. TO TRADER.

Covenants by master to instruct.

To provide board, &c.

To pay wages.

To endorse certificate of service.

IN WITNESS, &c.

(*c*) If the whole of the premium is not paid at once, the parent or some relative of the apprentice should covenant to pay the balance. Otherwise the burden would lie on the master to show that the arrangement was proper and the premium reasonable, and that instruction had been given under the deed: see *Walter* v. *Everard*, [1891] 2 Q. B. 369.

II. TO SEA SERVICE.

II. ARTICLES *of* APPRENTICESHIP *to* SEA SERVICE (*d*).

THIS DEED (*e*), made the —— day of ——, 19—, BETWEEN [*apprentice*], of ——, in the county of —— (hereinafter called "the apprentice"), of the one part, and [*master*], of ——, in the county of —— (hereinafter called "the master"), of the other part; WHEREAS the apprentice attained the age of —— years on the —— day of —— now last past: NOW THIS DEED WITNESSETH that the apprentice, of his own free will, places and binds himself to the master during the term of —— years from the date of this deed, and hereby covenants with the master that during the said term he will honestly, faithfully, and diligently serve the master and such other person or persons in the navigation of any ship or vessel as the master shall direct and appoint, and will obey his and their lawful commands on board any ship or vessel in or to which he shall be ordered by him or them to go, and will, when required, render to the master and such person or persons as aforesaid, true accounts of all goods, merchandise, and moneys belonging to the master, which shall be committed to the charge of or come into the hands of the apprentice: AND that he, the apprentice, will not do or willingly suffer to be done by others any hurt, prejudice, or damage to the goods, merchandise, or other property or affairs of the master, or of any such person or persons as aforesaid, but will, to the utmost of his power, hinder and prevent the same, and immediately give to him or them notice thereof; AND will not, without leave, absent himself from his service, nor frequent taverns, nor play at unlawful games, but will in all respects behave and demean himself as a good and faithful apprentice towards the master and such other person or persons as aforesaid: IN CONSIDERATION WHEREOF the master covenants with the apprentice, that during the said term he, the master, will teach, or cause to be taught, the apprentice in the art, business and duties of a seaman, and will find and provide the apprentice with sufficient

Apprentice binds himself.

Covenants by master.

Sea service.

(*d*) See sects. 105—109 of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), which contain provisions with regard to apprentices to the sea service.

(*e*) Indentures of apprenticeship to sea service must be executed in duplicate and are exempt from stamp duty under the Merchant Shipping Act, 1894, s. 108 (1).

food, drink, washing, medicine and medical and surgical aid and attendance, and also all sea bedding and wearing apparel, both woollen and linen, and other necessaries, and will after expiration of the first year [*or*, "of the first —— years"] of the said term pay to the apprentice wages at the rates and in manner following, &c. [*Ante*, p. 119.] II. TO SEA SERVICE.

IN WITNESS, &c.

III. ARTICLES *of* APPRENTICESHIP *to a* MERCHANT, *with* SPECIAL PROVISIONS.

THIS DEED (*f*), made the —— day of ——, 19—, BETWEEN [*apprentice*], of, &c. (hereinafter called "the apprentice"), of the first part; [*father*], of, &c., the father of the said [*apprentice*] (hereinafter called "the father"), of the second part; and [*master*], of, &c., carrying on the trade or business of —— at —— (hereinafter called "the master"), of the third part: WITNESSETH, and it is hereby agreed and declared, and the father, so far as relates to the acts and stipulations on the part of himself and of the apprentice to be performed and observed, covenants with the master, and the master, so far as relates to the acts and stipulations on his part to be performed and observed, covenants with the father, and also separately with the apprentice, as follows, that is to say:— Parties. *Testatum.*

1. The apprentice, of his own free will and accord, and with the consent of the father, hereby binds himself as apprentice to the master, from the date of this deed for the term of —— years, to learn the trade or business of ——. Apprentice binds himself.

2. The apprentice will, during the said term, well and truly serve the master, as apprentice in the trade or business aforesaid, at such place or places, either within the United Kingdom or elsewhere (*g*), as the master shall direct and appoint, and will diligently attend to the business and concerns of the master. Covenants by father that apprentice will serve,

3. The apprentice will not, without permission, absent himself from the service of the master, nor do or commit any damage or and not absent himself;

(*f*) Stamp, 2*s*. 6*d*.

(*g*) As to change of locality of business, see *Eaton* v. *Western*, 9 Q. B. D. 636; and as to the meaning of "serving," see *Richardson* v. *Colne Fishery Co.*, 77 L. T. 501.

III. TO MERCHANT.

waste to the master or his concerns, nor knowingly suffer the same to be done by others, if within his power to prevent it, nor without forthwith giving notice thereof to the master.

will assist in conducting master's business;

4. The apprentice will, during the said term, receive and take into his care and custody all such goods and merchandise and other articles of every description as shall be consigned or sent to him by or for the use or on account of the master, and will sell and dispose of the same to the best possible profit, for the benefit of the master. AND ALSO will, at all times during the said term, follow and perform the advice, direction, and orders of the master, which shall by letters or otherwise be sent, given, or made known to him, the apprentice, concerning such goods, merchandise, and articles as aforesaid.

will keep books of accounts;

5. The apprentice will, at the cost of the master, provide and keep in good order books of account concerning such his employment as aforesaid, according to the custom of merchants in such cases; AND will deal justly, truly, and faithfully with the master, in all and every his accounts, reckonings, bargains and dealings relating to and concerning his said employment, and will, from time to time, as occasion shall arise, send to the master true accounts of all the business and dealings of him, the apprentice, and letters of advice of all such measures and occurrences wherewith it shall be proper that the master shall be acquainted, and will return to —— aforesaid, if employed away therefrom, whenever thereunto required by the master, by letter or otherwise, with all his accounts and reckonings duly made up and in proper order.

will deliver accounts.

6. The apprentice will, from time to time, when requested so to do, produce and show to the master all his books of account concerning all such dealings as aforesaid, and make and give to the master a just and perfect account and reckoning of and concerning all and every such goods, merchandise and other articles and moneys which shall come into his hands for or on behalf of the master. And, moreover, will, within —— days after every such account as aforesaid shall have been sent to the master, deliver and pay to the master all and every such goods, merchandise and other articles and moneys as by such account shall be shown to be due from the apprentice to the master.

Covenant by father to

7. The father will at his own cost provide the apprentice during the said term with sufficient and suitable clothes and apparel, and

also with medicine and medical attendance and other necessaries, except as is hereinafter mentioned (*h*).

provide necessaries.

8. In consideration of the service of the apprentice and of the covenants and stipulations on his part and on the part of the father to be observed and performed, and also in consideration of the premium or sum of £—— now paid by the father to the master (the receipt, &c.), the master agrees to take and accept the apprentice as his apprentice during the said term, and to employ him not only at —— aforesaid, but also at other places in the United Kingdom and abroad where the master now has or shall hereafter during the said term have dealings.

Covenants by master to take apprentice;

9. The master will employ and instruct the apprentice, or cause him to be employed or instructed, in the said trade or business of ——, and in all matters incident thereto, to the best of his skill, knowledge and ability.

to employ and instruct apprentice;

10. The master will either provide the apprentice with good and sufficient board and lodging in the house of him, the master, in a similar manner with his own family, and so that the apprentice shall at all times take his meals at the table with, and at the same time as, the master and his family; or will, if and whenever the apprentice shall be absent from —— aforesaid on the business of the master, and at any other times if the master shall so think proper, pay or allow to the apprentice during the said term or any part thereof the sum of £—— per month in lieu and full satisfaction of the board and lodging of the apprentice.

to provide board and lodging, or allowance in lieu thereof.

11. The master will also at all times during the said term pay all the expenses of and incident to any journeys which the apprentice shall make to any place or places in the United Kingdom or elsewhere, on the business and by the direction or with the sanction of the master.

To pay expenses of journeys, &c.:

12. From and after the expiration of the second year of the said term the master shall pay to the apprentice wages at the rates and in manner following, that is to say, during the third year of the said term, &c. [*as agreed*].

to pay wages.

13. The apprentice shall be at liberty, upon giving to the master —— weeks' notice in writing of his intention so to do,

Apprentice may terminate contract by notice.

(*h*) As to the master's liability to provide medical attendance in the absence of stipulation, see *Reg.* v. *Smith*, 8 C. & P. 153.

III. TO MERCHANT.

to leave the service of the master at the expiration of the —th year of the said term, and to use and employ the remaining year of his apprenticeship to his own benefit and advantage, where and as he shall think fit, without let or hindrance from or by the master, but so nevertheless that during the said remaining year the apprentice shall not in that case be entitled to any board or lodging, or allowance or payment in lieu or satisfaction thereof respectively, or to any wages from or at the cost of the master, and that the master shall not be entitled to any gains or earnings made by the apprentice during that year.

Provision in case of death of apprentice.

[14. If the apprentice shall die within —— calendar months from the date hereof [or shall within that time be incapacitated by failure of health from following the said trade or business, such incapacity being certified by two qualified medical practitioners (*i*)] the master shall repay to the father the sum of £——, part of the said premium or sum of £——.]

Provision in case of death of master (*j*).

15. If the master shall die before the expiration of the apprenticeship, his executors or administrators shall, as soon as may be after his death, find another suitable master for the apprentice following the trade or business of ——, and at their own cost assign over and bind the apprentice to such new master for the then residue of the term of his said apprenticeship upon the same terms, or upon terms equally advantageous to the apprentice, as those herein contained: And in default thereof shall pay to the father the sum of £—— for every year, and a proportionate sum for any fraction of a year of the said term, which shall remain unexpired at the death of the master.

Dismissal for misconduct (*k*).

16. In the event of wilful disobedience by the apprentice to the lawful and reasonable commands of the master, or in case the apprentice shall otherwise grossly misconduct himself, the master may discharge the apprentice from his service; but in such case he shall repay to the father the sum of £—— for every year, and

(*i*) See *Derby* v. *Humber*, L. R. 2 C. P. 247.

(*j*) In the absence of agreement the premium cannot be recovered on the master's death: see *Whincup* v. *Hughes*, L. R. 6 C. P. 78; *Ferns* v. *Carr*, 28 Ch. D. 409. In the case of the bankruptcy of the master the apprentice has a preferential claim to payment under sect. 34 of the Bankruptcy Act, 1914.

(*k*) See *Westwick* v. *Theodor*, L. R. 10 Q. B. 224; *Waterman* v. *Fryer*, [1922] 1 K. B. 499.

a proportionate sum for any fraction of a year of the said term then remaining unexpired.

IN WITNESS, &c.

IV. ARTICLES *of* CLERKSHIP *to a* SOLICITOR (*l*).

THIS DEED, made the —— day of ——, 19—, BETWEEN [*clerk*], of, &c., of the first part; [*father of clerk*], of, &c., of the second part; and [*solicitor*], of, &c., a solicitor of the Supreme Court, of the third part, WITNESSETH as follows:—

Clerk binds himself.

1. The said [*clerk*], of his own free will, and with the consent of the said [*father*], hereby places and binds himself clerk to the said [*solicitor*], to serve him from the day of the date hereof, for the full term of [five] years.

Covenants by father.

2. The said [*father*] hereby covenants with the said [*solicitor*] (a) that the said [*clerk*] will faithfully and diligently serve the said [*solicitor*], as his clerk, in the profession of a solicitor, during the said term; and that the said [*clerk*] will not, at any time during such term, cancel, obliterate, spoil, destroy, waste, embezzle, spend or make away with any of the books, papers, writings, moneys, stamps, chattels or other property of the said [*solicitor*], or his personal representatives, or of any firm of which the said [*solicitor*] is or may be a member, or any of his or their clients or employers, which shall be deposited in his or their hands, or entrusted to his or their custody or possession, or which shall come into the care or possession of the said [*clerk*], and that in case the said [*clerk*] shall act contrary to the covenant lastly hereinbefore contained, or if he the said [*solicitor*], or his personal representatives, or any such firm as aforesaid, or any partner thereof, shall sustain or suffer any loss, damage or

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(*l*) The stamp will be 80*l.*: see Stamp Act, 1891, "Articles of Clerkship," and sects. 26, 27. The stamp must be affixed before execution. As to articles of clerkship to a solicitor, see 6 & 7 Vict. c. 73, ss. 3, 4, 5, 6, 12, and 13. See also 23 & 24 Vict. c. 127, ss. 2—6, 15, 32; 40 & 41 Vict. c. 25; 51 & 52 Vict. c. 65; Solicitors (Articled Clerks) Acts, 1918 (8 & 9 Geo. 5, c. 16) and 1919 (9 & 10 Geo. 5, c. 27); Solicitors Act, 1922 (12 & 13 Geo. 5, c. 57). As to Ireland, see Solicitors (Ireland) Act, 1898. As to enrolling articles *nunc pro tunc*, see *Ex parte Darville*, L. R. 2 C. P. 244; *Re Sayer*, L. R. 10 C. P. 569; and *Ex parte Banyard*, *ibid.* 638. As to bankruptcy of the solicitor, see Bankruptcy Act, 1914, s. 34. As to return of premium, see *Ferns* v. *Carr*, 28 Ch. D. 409.

IV. TO SOLICITOR.

prejudice by the misbehaviour, neglect or improper conduct of the said [*clerk*], the said [*father*], or his personal representatives, will indemnify the said [*solicitor*], or his personal representatives, and any such firm or partner as aforesaid, and make good and refund to him or them the amount or value thereof; (b) that the said [*clerk*] will, from time to time, and at all times, during the said term, keep the secrets of the said [*solicitor*], and any such firm as aforesaid, and of every partner therein, and readily and cheerfully obey and execute his or their lawful and reasonable commands, and will not depart or absent himself from the service or employ of the said [*solicitor*], at any time during the said term, without his consent first obtained, but will from time to time, and at all times during the said term, conduct himself with all due diligence, honesty and propriety (*m*).

Covenants by solicitor.

3. In consideration of the premises, and also of the sum of £—— by the said [*father*] to the said [*solicitor*] paid at or before the execution of these presents (the receipt whereof the said [*solicitor*] hereby acknowledges), the said [*solicitor*] covenants with the said [*father*] that the said [*solicitor*] will accept and take the said [*clerk*] as his clerk, and also that the said [*solicitor*] will, by the best ways and means he may or can, and to the utmost of his skill and knowledge, teach and instruct, or cause to be taught and instructed, the said [*clerk*] in the practice or profession of a solicitor of the Supreme Court, which he the said [*solicitor*] now does, or shall at any time hereafter, during the said term, use or practise, and also will, at the expiration of the said term, use his best means and endeavours at the request, costs and charges of the said [*clerk*], to cause and procure him the said [*clerk*] to be admitted a solicitor of the said Supreme Court; Provided that the said [*clerk*] shall have faithfully and diligently served his intended clerkship, and passed the required examinations, and duly qualified himself in all other respects to be admitted to practise as a solicitor.

(*m*) A covenant may be added prohibiting the clerk after the expiration of the term from acting for clients of the master's firm: see *Reid* v. *Burrows*, [1892] 2 Ch. 413; *Cattle* v. *Thorp*, [1900] W. N. 83; but such a covenant must be "reasonable": see *Lewis* v. *Durnford*, 24 L. T. R. 64; and compare case of *British Reinforced Concrete Engineering Co.* v. *Schelff*, [1921] 2 Ch. 563; and as to the effect of a covenant not to practise, see *Sewell* v. *Wright*, 50 Sol. J. 223; and *Robertson* v. *Willmot*, [1909] W. N. 155.

[4. In case the said [*solicitor*] shall retire from practice or die within the said term of five years, the said [*solicitor*], or his personal representatives, shall within one month after such retirement or death pay to such solicitor or solicitors as shall accept the said [*clerk*] as his or their clerk for the residue of the said term, if such death or retirement happens within the first year of the term, £——; if between the first and the expiration of the second year, £——; if between the second and the expiration of the third year, £——, &c.] (*n*).

IN WITNESS, &c.

V. ASSIGNMENT *of* DEED *of* APPRENTICESHIP. (*By* INDORSEMENT) (*o*).

THIS DEED, made the —— day of ——, 19—, BETWEEN the within named [*master*], of the first part; the within named [*apprentice*], of the second part; the within named [*father of apprentice*], of the third part; and [*new master*], of, &c., of the fourth part, WITNESSETH that in consideration of the sum of £—— paid by the said [*old master*] to the said [*new master*], the said [*old master*], with the consent of the said [*apprentice*], and at the request of the said [*father*], hereby assigns unto the said [*new master*], the within written deed of apprenticeship, and all the benefit thereof, and all the right, interest, claim and demand of the said [*old master*] thereunder: TO HOLD the same for the residue now unexpired of the within mentioned term of years: AND the said [*father*] hereby covenants with the said [*new master*] that the said [*apprentice*] shall faithfully, diligently and honestly serve the said [*new master*] as his apprentice during the residue of the said term, and that he the said [*father*] will perform and observe all the covenants on his part contained in the within written indenture in as full and perfect a manner as if they were herein repeated and entered into with the said [*new master*]: AND the said [*new master*] hereby covenants with the said [*father*] and

Parties.

Assignment of apprenticeship.

Covenants by father with new master.

Covenants by new master.

(*n*) See 6 & 7 Vict. c. 73, s. 13; and *Ex parte Williamson*, 4 Ch. D. 581.

(*o*) Articles of clerkship to a solicitor are not assignable: see *Ex parte Adams*, 4 Ch. D. 39. It would seem that this deed will bear a stamp of 2*s.* 6*d.*: see Stamp Act, 1891, s. 25.

V. ASSIGNMENT OF INDENTURE.

with the said [*old master*] that he the said [*new master*] will, during the remainder of the said term, to the utmost of his skill and knowledge, instruct the said [*apprentice*] in the trade or business of a ——, which he the said [*new master*] now doth or shall hereafter practise, and will perform and observe all the covenants on the part of the said [*old master*] contained in the within written indenture so far as the same remain to be performed and observed in as full a manner as if they were herein repeated and entered into by the said [*new master*], and will keep the said [*old master*] indemnified from the same, and all actions, claims and demands in respect thereof.

In witness, &c.

ARBITRATION.

PRELIMINARY NOTE.

Under the Arbitration Act, 1889, which superseded the previous statutory provisions as to arbitration, every submission to arbitration is, in the absence of a contrary intention expressed therein, irrevocable, except by leave of the Court or a judge, and is to have the same effect as if made an order of the Court. (Sect. 1.) (See *Smith & Service,* 25 Q. B. D. 545.)

By sect. 2 certain provisions contained in the first schedule to the Act as to the number of arbitrators, the time for making the award, the examination of parties, and the production of documents, and as to the award being final, and placing the costs of the reference and award, &c. under the direction of the arbitrators (see *Re Stephens,* 36 Sol. J. 465; *Re Prebble,* [1892] 2 Q. B. 602), are to be deemed to be included in every submission unless a contrary intention is expressed therein. As to the discretion of an arbitrator as to costs, see *Gray* v. *Lord Ashburton,* [1917] A. C. 26; *Becker Shillan & Co. and Barry Bros.,* [1921] 1 K. B. 391. Under a submission by agreement out of Court, an arbitrator has no power to make an order for security for costs. (*Re Unione Stearinerie Lanza and Wiener,* [1917] 2 K. B. 558.)

As to an arbitrator's power to order discovery of documents, see *Kursell* v. *Timber Operators and Contractors*, [1923] 2 K. B. 202.

Sect. 3 provides for references to an official referee.

Sect. 4 empowered any Court (including a County Court) or a judge to stay legal proceedings by one party to a submission against the other party after appearance and before delivery of pleadings or taking any other step in the proceedings. (*Manchester Ship Canal Co.* v. *S. Pearson & Son*, [1900] 2 Q. B. 606. But see now sect. 16 of the Administration of Justice Act, 1920. And see also *Ochs* v. *Ochs Brothers*, [1909] 2 Ch. 121; *Cohen* v. *Arthur*, 56 Sol. J. 344; *Parker Gaines & Co.* v. *Turpin*, [1918] 1 K. B. 358.) As to when the Court will or will not stay proceedings, see *Barnes* v. *Youngs*, [1898] 1 Ch. 414; *Re Carlisle*, 44 Ch. D. 200; *Farrar* v. *Cooper*, *ibid.* 323; *Bonnin* v. *Neame*, [1910] 1 Ch. 732; *S. Freeman & Sons* v. *Chester R. Council*, [1911] 1 K. B. 783; *Printing, &c. Co.* v. *Linotype, Limited*, [1912] 1 Ch. 566; *Hogg* v. *Belfast Corpn.*, [1919] 2 I. R. 305; and as to when the reference will be enforced by the Court, *Renshaw* v. *Queen Anne's, &c. Co.*, [1897] 1 Q. B. 662; *Parry* v. *Liverpool Malt Co.*, [1900] 1 Q. B. 339. As to when a petition of right may be stayed, see *Anglo-Newfoundland Development Co.* v. *The King*, [1920] 2 K. B. 214.

Repudiation of a claim going to the root of the contract precludes the defendant from pleading the arbitration clause as a bar to an action to enforce the claim. (*Jureidini* v. *National British and Irish Millers Insurance Co.*, [1915] A. C. 499. See also *Monro* v. *Bognor Urban District Council*, [1915] 3 K. B. 167; as to misstatements in a policy of insurance, *Stebbing* v. *Liverpool and London and Globe Insurance Co.*, [1917] 2 K. B. 433; *Woodall* v. *Pearl Assurance Co.*, [1919] 1 K. B. 593.

Sect. 5 empowers the Court in certain cases to appoint arbitrators. (See *Re Wilson and Eastern Counties, &c. Co.*, [1892] 1 Q. B. 81; *Re Eyre and Leicester Corp.*, *ibid.* 136; *Taylor* v. *Denny*, [1912] A. C. 666; *Re Bjornstad and The Ouse Shipping Co.*, [1924] 2 K. B. 673. Sect. 5 is extended as to two arbitrators to cases where a submission to arbitration provides for a reference being made to three arbitrators. (Sect. 16 of the Administration of Justice Act, 1920.)

Sect. 6 provides for the appointment of another arbitrator by

the acting arbitrator in the case of either of two appointed arbitrators refusing to act, or being incapable, or dying, and, in the case of one party failing to appoint an arbitrator for seven days after notice to make the appointment given by the other party, for the appointment of the appointee of the latter as sole arbitrator, unless the submission expresses a contrary intention. And see sect. 16 of the Administration of Justice Act, 1920. Compare *Re Smith & Service and Nelson & Sons*, [1890] 25 Q. B. D. 545 (this has been altered by the above Act).

Sect. 7 empowers arbitrators (a) to administer oaths or take affirmations, (b) to state an award in the form of a case for the opinion of the Court, and (c) to correct clerical errors in awards. As to an award made (1) in alternative form as a special case if set down for hearing, and secondly, as a final award if not set down, see arbitration between *Olympia Oil and Cake Co. and McAndrew, Moreland & Co.*, [1918] 2 K. B. 771.

As to power of an arbitrator to correct his award, see *Sutherland & Co.* v. *Hannevig Bros.*, [1921] 1 K. B. 336.

Sects. 8—12. Various ancillary powers are conferred by these sections. As to where the summary procedure under sect. 12 may be used or an action would be the right procedure, see *Re Boks & Co. and Peters, Rushton & Co.*, [1919] 1 K. B. 491.

Sects. 13 to 17 relate to orders of Court. As to whether the Court can refer a matter under sect. 17 of the M. P. A., 1882, to an official referee for trial under sect. 14 of the Arbitration Act, 1889, see case in [1917] 2 K. B. 72.

The Court has a free discretion under sect. 19 of the Arbitration Act, 1889, to require a commercial tribunal of arbitration having its own rules of procedure to state a case for the opinion of the Court upon a substantial question of law. (*Re Fischel & Co. and Mann and Cook*, [1919] 2 K. B. 431. Sect. 21 of the Arbitration Act, 1889, has been repealed by the Administration of Justice Act, 1925. (See Schedule.)

As to stating a case for the opinion of the Court (sect. 19), see *Re Spillers and Baker, &c.*, [1897] 1 Q. B. 312; *Re Palmer and Hosken*, [1898] 1 Q. B. 131; *C. T. Cogstad & Co.* v. *H. Newsum Sons & Co.*, [1921] 2 A. C. 528. As to the costs of stating a case, see *Re Knight and Tabernacle Permanent Building Society*, [1892] 2 Q. B. 613; *Sidney* v. *North Eastern Railway Co.*, [1916] 2 K. B. 760.

As to an award against the Crown, see *Grech* v. *Board of Trade*, [1923] W. N. 235.

As to arbitrations under London Building Act, 1894, see *Re Stone and Hastie*, [1903] 2 K. B. 463; *Leadbetter* v. *Maryebolne Borough Council*, [1904] 2 K. B. 893; *Adams* v. *Marylebone Borough Council*, [1907] 2 K. B. 822; *Selby* v. *Whitbread & Co.*, [1917] 1 K. B. 736.

As to "submission" (defined by sect. 27), see *Austrian-Lloyd Steamship Co.* v. *Gresham Life Assurance Society*, [1903] 1 K. B. 249; *Hickham* v. *Kent* or *Romney Marsh, &c. Association*, [1915] 1 Ch. 881 (company); *Clements* v. *County of Devon Insurance Committee*, [1918] 1 K. B. 94; *Richardson's and Bradley & Co.* v. *Bernhard*, [1925] 2 K. B. 121.

As to arbitrators in a proceeding for arbitration, hearing evidence of one party in the absence of the other, see *W. Ramsden & Co.* v. *Jacobs*, [1922] 1 K. B. 640.

As to arbitrations under the Public Health Act, 1875, see *Stoker and Mayor, &c. of Morpeth* (arbitration between), [1915] 2 K. B. 511.

As to arbitrations under the Housing of the Working Classes Act, 1890, see *London County Council* v. *Wilson's Executors*, [1916] 1 K. B. 837.

Arbitrations under the Agricultural Holdings Act, 1923, must be determined (sect. 16 (1)) by a single arbitrator in accordance with the rules set out in the second schedule to the Act. Subsect. (5) provides that the Arbitration Act, 1889, shall not apply to arbitrations under the Agricultural Holdings Act, 1923. As to provisions for expediting and reducing the costs of arbitration proceedings, see sect. 17.

In the case of agricultural holdings a landlord or tenant may require questions relating to the payment of compensation to be submitted to arbitration, and also questions as to rent payable by a tenant. (Agricultural Holdings Act, 1923, s. 12 (2) (3) and (4). As to an arbitrator's duties in questions submitted to him regarding the payment of rent, see sect. 12 (5) (b).

As to the forms for proceedings, see r. 17 of the second schedule.

As to whether in an arbitration under the previous Agricultural Holdings Act, 1908 (repealed), the arbitrator may direct the successful party to pay the costs, see *Gray* v. *Ashburton (Lord)*, [1916] 2 K. B. 353; on appeal, [1917] A. C. 26. And

as to an arbitration under the Arbitration Act, 1889, where the question of costs has been submitted, see *ibid.*

As to arbitrator determining the existence affecting the rights and obligations of the parties, see *Produce Brokers Company* v. *Olympia Oil and Cake Company*, [1916] 1 A. C. 314.

It is the duty of an arbitrator to distinguish clearly between his rulings on law and on fact. (See *Herbert* v. *Samuel Fox & Co., Ltd.*, [1916] A. C. 405 at p. 414; *J. & P. Hutchinson* v. *McKinnon, ibid.* 471 at p. 476.)

An award void as to part may be good as to the remainder, provided that the bad can be clearly separated from the good. (*Selby* v. *Whitbread & Co.*, [1917] 1 K. B. 736 at p. 748.)

As to the power of personal representatives of a deceased person to submit to arbitration questions affecting the estate, see sect. 15 (f) of the Trustee Act, 1925.

As to how far the Court has power to set aside an award when a question of construction is specifically referred to arbitration, see *Government of Kelantan* v. *Duff Development Co.*, [1923] A. C. 395; and as to how far an award cannot be reviewed by the Court, see *Darlington Waggon Co.* v. *Harding and the Trouville, &c. Co.*, [1891] 1 Q. B. 245.

As to the competency of an arbitrator as witness before an umpire, see *Bourgeois* v. *Weddell & Co.*, [1924] 1 K. B. 539.

By the Administration of Justice Act, 1920, s. 16, provision is made in the case of references to three arbitrators where one party fails to appoint, or if two arbitrators after appointment fail to appoint a third, and if the third refuses to act after appointment, &c.

See further as to arbitration, the notes in Key & Elph., 12th ed., Vol. I.; Russell on Arbitration, 11th ed.

Mere appointments of arbitrators or umpires, and notices in pursuance of a reference, do not require stamps.

PRECEDENTS.

I. AGREEMENT

I. AGREEMENT *on a* PURCHASE, *between the* VENDOR *and the* PURCHASER, *to refer to* ONE ARBITRATOR *all* DISPUTES *existing or which may arise before the* LAST TEN DAYS *preceding the* ARBITRATOR'S FIRST SITTING. VARIATIONS *for* REFERENCE *to* TWO ARBITRATORS *and their* UMPIRE (*a*).

AN AGREEMENT (*b*), made the —— day of ——, BETWEEN [*vendor*], of, &c., of the one part; and [*purchaser*], of, &c., of the other part. WHEREAS by an agreement, dated, &c. [*recite agreement for purchase, &c.*]. AND WHEREAS disputes and differences exist between the said [*vendor*] and the said [*purchaser*], respecting the said agreement, and otherwise relating to the premises. NOW IT IS HEREBY AGREED, as follows:—

Recital of agreement.

That disputes exist between the parties.

1. All disputes (*c*) and differences which exist between the said parties respectively, or either of them; and also all other disputes and differences that may so exist at any time or times, before the last ten days immediately preceding the day which shall be appointed by the arbitrator [arbitrators] hereinafter named, for the first sitting in the arbitration, or any matters and things relating thereto, or arising out of the said agreement, shall be referred to the arbitration of [A. B.], of, &c. [*or*, A. B., of, &c. (nominated by the said [*vendor*]), and C. D., of, &c. (nominated by the said [*purchaser*]), or in case they shall disagree, then, as regards the matter or matters as to which such disagreement shall exist, to the umpirage of E. F., of, &c. [*or*, "of such person as they shall in writing appoint as umpire"]].

Disputes to be referred.

(*a*) Under the First Schedule to the Arbitration Act, 1889, (a) if no other mode of reference is provided the reference shall be to a single arbitrator; (b) if the reference is to two arbitrators, they may appoint an umpire at any time within the period for making the award.

(*b*) Stamp, if under hand only, 6*d.*; if under seal, 10*s*. Other forms of submission to arbitration and otherwise relating to arbitration will be found by reference to the "Index to the Precedents" in each volume of this work.

(*c*) In cases of this kind it is better to make the reference general, as above.

I. AGREEMENT TO REFER TO ONE ARBITRATOR.

Power for arbitrator to make plans and employ surveyor, &c.;

2. The said arbitrator [arbitrators or their umpire] may make or cause to be made plans of the lands, houses, buildings, and premises comprised in the said agreement, and to employ a surveyor or other person to survey, measure, or value the same at the expense of the parties, to be borne and paid as between them as the said arbitrator [arbitrators or their umpire] shall direct.

to direct parties, to execute deeds, &c.;

3. The said arbitrator [arbitrators or their umpire] shall have full power to award and direct that the parties respectively, or their respective personal representatives, shall execute and do such conveyances, assurances, releases or other instruments or things as the said arbitrator [arbitrators or their umpire] shall think proper, and the same shall be executed and done accordingly.

to take the opinion of counsel.

4. The said arbitrator [arbitrators or their umpire] may take the opinion of counsel upon any question arising in the reference, and may state a case for this purpose, and direct how the costs thereof are to be borne.

Statement of matters intended to be referred.

5. The solicitor of each of the said parties shall state in writing all the matters and things intended to be referred by his client to the arbitrator [arbitrators], and shall, at least ten days before the day appointed by the arbitrator [arbitrators] for the first sitting on the arbitration, deliver a copy of such statement to the solicitor of each of the other parties respectively; and only those matters and things which shall be comprehended in such respective statements shall be taken into consideration by the arbitrator.

6. This shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statutory modification or re-enactment thereof for the time being, the provisions whereof shall so far as applicable apply to this reference.

IN WITNESS, &c.

II. AGREEMENT *to refer to* THREE ARBITRATORS (*d*) MATTERS *of* ACCOUNT *between a* CREDITOR *and* TWO DEBTORS, *where a* BALANCE *is admitted to be* DUE; AGREEMENT *to* SUSPEND *an* ACTION (*e*).

II. AGREEMENT TO REFER TO THREE ARBITRATORS.

AN AGREEMENT, made the —— day of ——, 19—, BETWEEN E. F., of, &c., of the first part; A. B., of, &c., of the second part; and C. D., of, &c., of the third part.

WHEREAS there have been divers dealings and transactions between the above-named E. F. and A. B., before and since the —— day of ——, on which day there was due and owing from the said A. B. to the said E. F. the sum of £——; and there have been also divers dealings and transactions between the said E. F. and the said A. B. and C. D., since the said —— day of ——; and several questions, disputes, and controversies have arisen, and are subsisting, not only between the said E. F. and the said A. B., but also between the said E. F. and the said A. B. and C. D.: AND WHEREAS there is now pending in the King's Bench Division of the High Court of Justice an action, wherein the said E. F. is plaintiff, and the said A. B. and C. D. are defendants; and also an action in the Chancery Division of the same Court, in which the said A. B. and C. D. are plaintiffs and the said E. F. is defendant, touching the said dealings and transactions, and the accounts relating thereto, in which last mentioned action the said E. F. has filed a counter-claim against the said A. B. and C. D. NOW IT IS HEREBY AGREED by and among the said E. F., A. B., and C. D. as follows, that is to say:—

Recital of dealings between parties; of disputes, and questions between the parties, and of two pending actions.

1. All questions, disputes, and controversies, in anywise relating to or concerning such dealings or transactions, as well between the said E. F. and the said A. B. as between the said E. F. and the said A. B. and C. D., and the accounts relating thereto shall be referred to the award and determination of [*arbitrator*], of, &c., [*arbitrator*], of, &c., and [*arbitrator*], of, &c., or any two of them (*f*.) AND this shall be deemed to be a submission to arbitra-

Agreement to refer.

(*d*) See Administration of Justice Act, 1920, s. 16 (1), as to where one party has made default in so appointing.

(*e*) Stamp, 6*d*., if under hand only; 10*s*., if under seal.

(*f*) If under an arbitration clause it is provided that the arbitrators should belong to a particular trade or possess special qualifications, an award made thereunder by anyone not coming within the terms of the

II. AGREEMENT TO REFER TO THREE ARBITRATORS.

tion within the Arbitration Act, 1889, or any statutory modification or re-enactment thereof for the time being in force.

Arbitrators may investigate accounts, and award a greater or less sum.

2. Notwithstanding the bond referred to in the statement of claim in the last mentioned action, the arbitrators are to be at liberty to investigate the whole of the accounts, dealings, and transactions between the parties, and to award a greater or less sum to be due from the said A. B. and C. D., or either of them, jointly or separately, to the said E. F., and to determine the true balances between the said parties, upon the whole of the said accounts, dealings, and transactions, but so that the balance before stated to be due from the said A. B. to the said E. F. on the —— day of —— shall not be questioned; AND to appoint how and in what proportions such balances shall be paid, and by and to whom.

Actions to be discontinued, and dismissed, with or without costs.

3. The arbitrators, or any two of them, shall be at liberty to direct the said actions to be discontinued or dismissed, with or without costs; but if with costs, then to ascertain whether such costs are to be paid as between solicitor and client, or as between party and party; and when, and by and to whom they shall be paid.

Agreement to perform award.

4. The several parties hereto shall well and truly obey and perform the award of the arbitrators, or any two of them, touching and concerning as well the several matters hereinbefore particularly mentioned, as also all other actions, accounts, claims, and demands whatsoever, between or among the parties up to the date hereof; but so that the balance before stated to be due from the said A. B. to the said E. F. on the —— day of —— shall not

Date at which award to be made (*g*).

be questioned; [AND so as the award be made in writing, under the hands of the arbitrators, or any two of them, and ready to be delivered to the parties [or if they or any of them shall be dead before the award shall have been made, to their respective personal representatives (*h*)], or such of them respectively as shall desire the same, on or before the —— day of —— next].

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clause is null and void: *Jungheim, Hopkins & Co.* v. *Foukelmann,* [1909] 2 K. B. 948.

(*g*) The First Schedule to the Arbitration Act, 1889, by clauses (c), (d), and (e), makes provisions as to the time within which the arbitrators shall make their award: see *Baring Gould* v. *Sharpington, &c. Syndicate,* [1899] 2 Ch. 80.

(*h*) But see, in a case of tort, *Bowker* v. *Evans,* 15 Q. B. D. 565.

II. AGREEMENT TO REFER TO THREE ARBITRATORS.

5. Each of the parties shall in the meantime be at liberty to inspect, peruse, and have copies of all or any of the books, papers, and writings in the hands, custody, or power of the other or others of them the parties respectively, relating to the matters in reference. Each party may inspect books, &c.

6. If either party shall, in the opinion of the arbitrators, or any two of them, without sufficient cause, by non-attendance or non-production of books, papers, or writings, or otherwise delay or impede, or attempt to delay or impede, the progress of the arbitrators, in making their award (*i*), the arbitrators, or any two of them, shall be at liberty to proceed *ex parte*, after two days' clear notice to the party or parties causing such delay or impediment as aforesaid, to be left at his or their dwelling-house or place of business. Power for arbitrators to proceed *ex parte*, after notice to party causing delay.

7. The arbitrators, or any two of them, if they shall think it necessary, shall be at liberty to appoint an accountant to assist them; the expense of such accountant to be paid, one-half by the said E. F., and the other half by the said A. B. and C. D. [*or*, "to be paid and borne as the arbitrators, or any two of them, shall direct"], such accountant to be required to make his solemn declaration, according to the statute, of the truth of the account or statement to be made out by him. Arbitrators may employ an accountant.

8. All proceedings in the said actions shall be stayed until the —— day of —— next, when, if no award shall be made, and the time for making the same shall not be enlarged by consent, the several parties shall be at liberty to proceed as they respectively shall be advised. Stay of proceedings.

9. The expenses of the arbitration and award shall be paid, one half by the said E. F. and the other half by the said A. B. and Expenses of arbitration (*k*).

(*i*) The arbitrators have power under clause (f) of the Schedule to the Arbitration Act, 1889, to examine parties and require the production of "books, deeds, papers, accounts, writings, and documents." And by clause (g) the examination may be on oath or affirmation.

(*k*) The costs of the reference and award are by clause (i) of the First Schedule to the 1889 Act to be in the discretion of the arbitrators or umpire (*Re Stephens*, 36 Sol. J. 464; *Re Prebble*, [1892] 2 Q. B. 602; *Re Stanley and Nuneaton Corpn.*, 59 Sol. J. 104; *Becker, Shillan & Co. and Barry Bros.*, [1921] 1 K. B. 391), unless the agreement excludes this discretion: *Fitzsimmons* v. *Mostyn*, [1904] A. C. 46. An arbitrator under

II. AGREEMENT TO REFER TO THREE ARBITRATORS.

C. D. [*or*, "The costs and expenses of and incidental to the preparation of these presents and a duplicate hereof, and all costs and charges attending the arbitration and award, shall be at the discretion of the arbitrators, who may direct such costs to be paid as between party and party or as between solicitor and client, as they shall think fit"].

In witness, &c. (*l*).

III. SUBMISSION *by* Bond *from one to one* (*m*), *in the* Common Form.

Common obligation from one to one.

KNOW ALL MEN that I [*obligor*], of, &c., am bound to [*obligee*], of, &c., in the sum of [*penalty*]. For which payment I bind myself (*n*) by these presents. Sealed with my seal. Dated this —— day of ——, 19—.

A general condition of a common arbitration bond.

THE CONDITION of the above written bond is such that if the said [*obligor*], or his personal representatives (*o*), shall in all things well and truly obey, abide by, and perform the award and final determination of [*arbitrators*], of, &c. (*p*), arbitrators named as well on behalf of the above bounden [*obligor*], as of the above-named [*obligee*], to award and determine concerning all differences and disputes now existing between the said [*obligor*] and the said [*obligee*], so as the said award be made in

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a submission by agreement out of Court has no power to make an order for security for costs: *Unione Stearinerie Lanza and Wiener*, [1917] 2 K. B. 558.

(*l*) For a form of award under this submission, see *post*, Precedent XVI., p. 147.

(*m*) Submissions are not unfrequently made by bond, each party executing to the other a bond in a named penalty, to abide by the award of the arbitrator. An arbitration bond requires an *ad valorem* bond stamp up to 300*l*., and 10*s*. for penalty of 300*l*. and upwards: see Stamp Act, 1891, sched. *tit.* "Bond."

(*n*) The personal representatives of the obligor are probably bound, though not expressly mentioned.

(*o*) See note (*a*) in Vol. I. K. & E. Precs. (11th ed.) p. 184.

Three arbitrators.

(*p*) If there be three arbitrators, which it is sometimes thought advisable to appoint in the first instance, as it prevents the necessity of having an umpire, say,

"or any two of them."

writing, under the hands of the arbitrators (*q*), and ready to be delivered to the parties, or if they or either of them shall be dead before the award shall have been made to their respective personal representatives, who shall desire the same, on or before the —— day of —— next (*r*), then the above written bond shall be void, and of no effect. And these presents shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statutory re-enactment or modification thereof for the time being in force.

Signed, sealed, and delivered
in the presence of

IV. APPOINTMENT *of an* ARBITRATOR *in* PURSUANCE *of an* ARBITRATION CLAUSE *in* ARTICLES *of* PARTNERSHIP.

MEMORANDUM.

Recital of articles of partnership,

WHEREAS by articles of partnership, dated, &c., and made, &c., amongst other things, IT WAS AGREED, that in case any dispute or question should arise between the said parties relative to the construction of the said articles, or to all or any of the matters or

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(*q*) "or any two of them."

(*r*) If the arbitrators are to extend the time, say,

Enlarged time.

"or, on or before such other day, not beyond the —— day of ——, as the arbitrators [or any two of them] shall, by writing under their hands, from time to time appoint."

Umpire.

If there be only two, or an equal number of arbitrators appointed, and on their disagreement an umpire is to be appointed, say,

"And in case the arbitrators should not make such their award within the time limit as aforesaid, if the above bounden [*obligor*], or his personal representatives, shall in all things well and truly obey, abide by, and perform the award and final determination of [*umpire*], of, &c., being the umpire named and chosen by the parties [*or*, "of such third person as the arbitrators shall in writing nominate and appoint as umpire] in and concerning the premises: So as the umpire do make and set down his award and umpirage in writing, and ready to be delivered to the parties or their respective personal representatives who shall desire the same, on or before the —— day of —— next,—Then," &c.

IV. APPOINTMENT OF ARBITRATOR BY ARTICLES OF PARTNERSHIP.

things therein contained, the same should be referred to the arbitration of two indifferent persons, one to be named by each of the parties, with power for such arbitrators to appoint an umpire in case of their disagreement: And that the award of the said arbitrators or umpire should be final and conclusive: AND WHEREAS disputes have arisen between the said parties relating to their partnership (and also relating to several other matters and things), and they have in pursuance of the said covenant agreed to refer the same accordingly. NOW, THEREFORE, I [*partner*] hereby nominate and appoint [*arbitrator*], of, &c., as arbitrator for me and on my behalf, to hear and determine the disputes aforesaid, in accordance with the provisions of the said articles of partnership.

that disputes have arisen.

Appointment of arbitrator.

Dated the —— day of ——, 19—.

WITNESS, A. B.

[*Signature.*]

V. NOTICE *by a* LANDOWNER *of* CLAIM *for* COMPENSATION, *and of* DESIRE *to have the same* SETTLED *by* ARBITRATION *under the Lands Clauses Consolidation Act,* 1845, *s.* 23; *and* REQUESTING *the* COMPANY *to concur in the* APPOINTMENT *of an* ARBITRATOR.

To the —— Railway Company.

Recital: of notice of lands being required;

WHEREAS I have received notice stating that you require to purchase or take for the purposes of your undertaking the lands specified in such notice, and particularly described in the schedule hereto, and that you are willing to treat for the purpose thereof, and as to the compensation to be made to me for the damage that may be sustained by me by reason of the execution of your works.

of amount of compensation offered.

AND WHEREAS upon such treaty you have offered me the sum of £——, and no more, for purchase-money and compensation in respect of the premises, and I am not satisfied therewith.

Statement of interest in lands;

NOW I HEREBY give you notice that I am interested in the said lands as tenant in fee simple in possession, and that I claim

of amount of

the sum of £—— [*a sum exceeding* 50*l.* (*s*)], as purchase-money

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(*s*) The Lands Clauses Consolidation Act, 1845, s. 23, only applies where the amount of compensation claimed or offered exceeds 50*l.*: see

and compensation in respect of such my interest, including compensation for all damage which I shall incur by reason of the severing of the lands intended to be taken from my other lands, or by your otherwise injuriously affecting my other lands by the execution of your works, but exclusive of all costs, charges and expenses incurred, or which may be incurred by me, in relation to the premises. And I further hereby give you notice that, in case you should dispute the amount of compensation so claimed by me as aforesaid, I desire to have the same settled by arbitration pursuant to the provisions of the Lands Clauses Consolidation Act, 1845. And I accordingly request you to concur with me in the appointment of a single arbitrator, or else to nominate and appoint an arbitrator to act on your behalf, by whom, together with an arbitrator to be in such case appointed by me, the amount of compensation to be paid to me shall be settled (*t*).

V. NOTICE BY LANDOWNER OF CLAIM FOR COMPENSATION.

compensation claimed;

of desire that amount shall be settled by arbitration.

Request to company to concur in appointing arbitrator.

Dated the —— day of ——, 19—.

A. B.

The Schedule above referred to.

VI. APPOINTMENT *of a* Single Arbitrator *by a* Landowner *and a* Railway Company *under the Lands Clauses Consolidation Act,* 1845.

Whereas the —— Railway Company are, by the —— Act, 19—, and the public Acts incorporated therewith, authorised to take the lands and hereditaments described in the schedule hereto,

Recitals: of notice to take land;

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sects. 25 to 37; amended as to sect. 28 by sect. 1 of the Lands Clauses (Umpire) Act, 1883 (46 Vict. c. 15).

(*t*) The landowner should not appoint an arbitrator to act on his behalf without having endeavoured and failed to induce the company to concur with him in appointing a single arbitrator: *Yates* v. *Mayor of Blackburn,* 6 H. & N. 61. In the event of the company refusing or failing to appoint an arbitrator a further notice should be sent by the landowner to the company concluding with an appointment of an arbitrator on his behalf,

"to settle the amount of the purchase-money and compensation to be paid to me by you in respect of my interest in the said lands."

VI. APPOINTMENT OF SINGLE ARBITRATOR.

of landowner's interest;

of dispute as to amount of compensation.

Appointment of single arbitrator.

and have given due notice to [*landowner*], of, &c., that they require to take the same premises for the purposes of their undertaking: AND WHEREAS the said [*landowner*] is entitled to the said premises as tenant in fee simple in possession, or is otherwise by the said Acts enabled to sell and convey or release the same: AND WHEREAS the said [*landowner*] and the Company have been unable to agree as to the amount of compensation to be paid by the Company for the interest of the said [*landowner*] in the premises, and for any damage that may be sustained by him by reason of the execution of the works, and the said [*landowner*] has required that the amount of such compensation shall be settled in manner provided by the Lands Clauses Consolidation Act, 1845, by the arbitration of a single arbitrator: NOW THESE PRESENTS WITNESS that, in pursuance of the provisions of the last hereinbefore-mentioned Act, the said [*landowner*] and the Company do and each of them doth hereby nominate and appoint [*arbitrator*], of, &c., to be the sole arbitrator to settle and determine by his award the questions of disputed compensation which have so arisen as aforesaid, having regard not only to the value of the interest of the said [*landowner*] in the said premises, subject to subsisting leases and tenancies, but also to the damage (if any) which may have been or may be sustained by the said [*landowner*] by reason of the severing of the same premises from his other lands or by otherwise injuriously affecting such other lands (*u*) by the exercise of the powers of any of the Acts hereinbefore mentioned. IN WITNESS WHEREOF the said [*landowner*] and [*director*] and [*director*], two of the directors (*x*)

(*u*) See Lands Clauses Consolidation Act, 1845, s. 68; *Caledonian Rail. Co.* v. *Walker*, 7 App. Cas. 259. A claim by a landowner for compensation for breach of a restrictive covenant may be made under sect. 68 regarding land for the benefit of which the restriction was imposed, see *Long Eaton Recreation Grounds Co.* v. *Midland Railway*, [1902] 2 K. B. 574.

(*x*) An appointment of an arbitrator under the Lands Clauses Consolidation Act, 1845, is to be "under the hands of the promoters or any two of them, or of their secretary or clerk": see sect. 25; and sect. 126 of the Railways Clauses Consolidation Act, 1845, specifies "the secretary or any two of the directors" as the proper persons to sign an appointment under that Act.

of the —— Railway Company, on behalf of the Company, have hereunto set their hands this —— day of ——, 19—. VI. APPOINTMENT OF SINGLE ARBITRATOR.

THE SCHEDULE ABOVE REFERRED TO.

VII. NOTICE *to* PRODUCE DOCUMENTS *by a* SOLICITOR *of* ONE *of the* PARTIES *in an* ARBITRATION.

IN THE MATTER of the arbitration between A. B. and C. D.

To Messrs. —— and ——, Solicitors.

THIS IS TO GIVE YOU NOTICE to produce before [*arbitrator*] and [*arbitrator*], the arbitrators to whom all matters in difference between the above-named parties have been referred, on the —— day of —— at —— o'clock, at the —— Hotel, —— Street, all books, deeds, writings, vouchers, and other documents whatsoever relating to the matters in difference between the said parties so referred as aforesaid, now in your possession, custody, or control, and particularly a certain deed, dated, &c., and made between, &c. [*describe the instrument*].

Dated the —— day of ——.

E. F.,
Solicitor for A. B., Esquire.

VIII. NOTICE *to* PRODUCE DOCUMENTS *by an* ARBITRATOR.

IN THE MATTER of the arbitration between A. B. and the —— Railway Company.

To A. B., Esquire.

PURSUANT to the powers given to me by the Lands Clauses Consolidation Act, 1845 (*y*), and of every other power me hereunto enabling, I HEREBY REQUIRE you to produce before me on ——

(*y*) Or otherwise state the submission. As to the power of an arbitrator under this Act to require production of documents, see sect. 32. Arbitrators, or their umpire, are given similar powers by the Railways Clauses Consolidation Act, 1845, s. 133; the Companies Clauses Consolidation Act, 1845, s. 128; and the Railway Companies Arbitration Act, 1859, s. 18; and by various other particular Acts, and generally by the Arbitration Act, 1889, 1st schedule (f).

VIII. NOTICE TO PRODUCE DOCUMENTS.

next, at my office, —— Street, Westminster, the several books of account, deeds, writings, and other documents, specified in the schedule hereto annexed, and all other documents relating to the matters referred to me in the above-mentioned arbitration (*z*).

Dated the —— day of ——, 19—.

C. D.,
Arbitrator.

THE SCHEDULE ABOVE REFERRED TO.

IX. NOTICE *by* ARBITRATORS *to* UMPIRE *of* DISAGREEMENT (*a*).

IN THE MATTER of the arbitration between A. B. and C. D.

To ——, Esquire, Umpire.

THIS IS TO GIVE YOU NOTICE, that we are unable to agree with regard to the matters referred to us in the above-mentioned arbitration, and that there is no probability of our making any award, and that you are at liberty to proceed as umpire forthwith, to investigate and decide on the said matters.

Dated the —— day of ——, 19—.

E. F. }
G. H. } *Arbitrators.*

X. ENLARGEMENT *of the* TIME *for* MAKING *an* AWARD *by the* ARBITRATORS (*b*).

IN THE MATTER of the arbitration between A. B. and C. D.

WE, the undersigned, by virtue of the power given to us by an agreement, dated, &c., whereby the matters in difference between the above-named parties were submitted for arbitration, do hereby enlarge [*or*, further enlarge] the time for making our award, respecting the said matters, until the —— day of ——

(*z*) As to enforcing the arbitrator's requirement for production of documents, see *Arbuckle* v. *Price*, 4 Dowl. 174.

(*a*) See Arbitration Act, 1889, sched. 1 (d).

(*b*) As to the power of the Court to enlarge the time, see Arbitration Act, 1889, s. 9; and see *Knowles & Sons, Ltd.* v. *Bolton Corp.*, [1900] 2 Q. B. 253.

next, on or before which day our award shall be made and published. X. ENLARGEMENT OF TIME FOR ARBITRATORS' AWARD.

As WITNESS our hands this —— day of ——, 19—.

E. F. }
G. H. } *Arbitrators.*

XI. REVOCATION *of* SUBMISSION *by a* PARTY.

KNOW ALL MEN (*c*) BY THESE PRESENTS, that I [*party*], of ——, in the county of ——, do hereby revoke, annul, and make void all the powers and authority which by a memorandum of agreement, dated the —— day of ——, 19—, and expressed to be made between [*parties*], were given to [*arbitrator*], of, &c., and [*arbitrator*], of, &c., the arbitrators thereby nominated and appointed to investigate, award, and determine all matters in difference between me and [*other party*], of, &c., concerning the dealings and transactions in the said memorandum of agreement mentioned: AND I do further hereby discharge and prohibit the said [*arbitrator*] and [*arbitrator*], or either of them, from making any award, or further proceeding in the matter of the said arbitration. Revocation of submission. Discharge of arbitrators.

As WITNESS my hand [and seal (*d*)] this —— day of ——, 19—.

Witness, C. D.

A. B.

XII. APPOINTMENT *of a* JOINT ARBITRATOR, *by* TWO ARBITRATORS. (*By* INDORSEMENT.)

WE [*arbitrators*] the arbitrators within named, by this memorandum in writing under our hands, made before entering upon

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(*c*) Stamp, 10*s.*, if under seal.

(*d*) All submissions are irrevocable (see Arbitration Act, 1889, s. 1), unless a contrary intention is expressed therein, except by leave of the Court or a judge. If the submission was made by deed it would appear that the revocation should likewise be by deed: see *Re Morphett*, 2 Dowl. & L. 967. Notice of the revocation, whether made by deed or parol, should be given to the arbitrators and to the other party: see *Marsh* v. *Bulteel*, 5 B. & Ad. 507. For another form of revocation, see *Fraser* v. *Ehrensperger*, 12 Q. B. D. 310.

XII. APPOINTMENT OF JOINT ARBITRATOR.

the within-mentioned arbitration, do hereby nominate and appoint [*third arbitrator*], of, &c., the third arbitrator, to whom, together with ourselves, the within-mentioned matters shall be referred, according to the tenor and effect of the within written bond [*or*, obligation, *or*, deed], on condition that he do, within —— days from the date hereof, in writing, consent to act therein accordingly.

In witness, &c. (*e*).

XIII. APPOINTMENT *of an* Umpire *by* Arbitrators. (*By* Indorsement (*f*).)

WE, the within named [*arbitrators*], by virtue of the powers given to us by the within written agreement [*or*, by an order made by Mr. Justice ——, on the —— day of ——, in an action, &c.], do hereby nominate and appoint [*umpire*], of, &c., to be the umpire (*g*), in the matters within referred, on condition that he do, within —— days from the date hereof, in writing, accept the umpirage.

As witness our hands, &c. (*h*).

XIV. APPOINTMENT *of an* Umpire *by* Arbitrators. (Not Indorsed.)

WE, the undersigned arbitrators, by virtue of the powers to us given by an agreement of reference made on the —— day of ——, 19—, between, &c. [*or*, by an order made by Mr. Justice ——, on the —— day of ——, in an action, &c.], do hereby nominate and appoint [*umpire*], of, &c., to be the umpire, accord-

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(*e*) All three arbitrators must concur in the award: *United Kingdom, &c. Association* v. *Houston & Co.*, [1896] 1 Q. B. 567.

(*f*) See *Re Hopper*, L. R. 2 Q. B. 367; Arbitration Act, 1889, sched. 1 (b).

(*g*) If it be to assist the arbitrators (see *Still* v. *Halford*, 4 Camp. 17), say,

Third arbitrator.

"To assist us in," &c.

Stamp.

(*h*) No stamp is necessary: *Routledge* v. *Thornton*, 4 Taunt. 704.

ing to the provisions of the said agreement of reference [*or*, order], on condition, &c. [*see last precedent*]. XIV. APPOINTMENT OF UMPIRE.

As WITNESS our hands, &c.

XV. APPOINTMENT *of an* UMPIRE *by* ARBITRATORS *under the Lands Clauses Consolidation Act*, 1845.

IN THE MATTER of the Lands Clauses Consolidation Act, 1845, and of the —— Act, 18—, and of a question of disputed compensation arisen under the said Acts between the —— Railway Company and [*landowner*], of, &c., Esquire.

WE, the undersigned [*arbitrator*], of, &c., the arbitrator appointed by and on behalf of the above-named Company, and the undersigned [*arbitrator*], of, &c., the arbitrator appointed by and on behalf of the above-named [*landowner*], do hereby, before entering upon the matters referred to us, nominate and appoint [*umpire*], of, &c., to be the umpire in the matter of the question of disputed compensation above referred to, to decide on any matters on which we shall differ, or which shall be referred to him under the provisions of the —— Act, or of the Lands Clauses Consolidation Act, 1845.

As WITNESS our hands this —— day of ——, 19—.

A. B.
C. D.

XVI. AWARD *of one* ARBITRATOR *for* PAYMENT *of a* SUM *of* MONEY; *and for* MUTUAL RELEASES (*i*).

TO ALL TO WHOM THESE PRESENTS SHALL COME, I [*arbitrator*], of, &c., send greeting. WHEREAS divers differences and disputes having arisen between A. B., of, &c., and C. D., of, &c., the said A. B. and C. D., by an agreement, dated, &c., and made, &c., agreed to refer the same to the award and determination of me the said [*arbitrator*]; and did accordingly, by their several Recitals of differences and submission:

(*i*) Stamp, 10*s*., Revenue Act, 1906 (6 Edw. 7, c. 20), s. 9.

XVI. AWARD OF ARBITRATOR.

of bonds, with conditions for performance of award.

obligations, bearing date on or about the —— day of —— respectively, become bound each to the other in the penal sum of £——; with conditions thereunder written, to obey and perform my award concerning all the matters in difference; so as the said award should be made in writing and ready to be delivered to the said parties in difference, or such of them as should require the same, on or before the —— day of —— then next. NOW KNOW YE that I, the said [*arbitrator*], having taken upon me the said award and arbitrament, and having been attended by the said parties and their respective solicitors, and having heard and considered the allegations and evidence of both the said parties and their witnesses concerning the premises, do hereby award as follows, that is to say:—

Award:

of sum of money;

1. I award and determine that the said C. D. shall pay to the said A. B. on the —— day of —— next ensuing, the sum of £——.

and that each of the parties shall give to the other a general release.

2. I further award and determine that upon payment of the said sum of £—— to the said A. B. as aforesaid, they the said A. B. and C. D. shall respectively, at the cost of the party requiring the same, make and execute each unto the other of them releases in writing of all actions, proceedings, debts, controversies, claims, and demands whatsoever, up to the day of the date of the aforesaid obligations.

Costs.

3. I further award that the costs of the reference, including the costs of the preparation and execution of the said agreement of reference and of this award, shall be borne and paid as to one moiety thereof by the said A. B., and as to the other moiety by the said C. D. [*or otherwise as the arbitrator may direct*].

IN WITNESS whereof I, the said [*arbitrator*], the arbitrator aforesaid, have hereunto set my hand the —— day of ——, 19—.

Signed and published in the presence of us (*k*)

(*k*) It seems generally prudent to have two witnesses to an award or umpirage, in order to prevent the trouble which would be caused in case a single witness should die, and it should afterwards be requisite to have an affidavit of the due execution, in order to ground a motion for an attachment.

XVII. AWARD *that a* PARTNERSHIP *be* DISSOLVED *with consequent* DIRECTIONS (*l*).

XVII. AWARD FOR DISSOLUTION OF PARTNERSHIP.

TO ALL TO WHOM THESE PRESENTS SHALL COME, I [*arbitrator*], of, &c., send greeting. WHEREAS divers disputes and differences have arisen between A. B. and C. D. with reference to the business carried on by them in partnership under the style or firm of B. & Co., and with reference to their respective rights and liabilities under their articles of partnership, dated, &c. AND WHEREAS by an agreement, dated, &c., and made, &c., the said A. B. and C. D. agreed to refer all such disputes and differences to me as arbitrator, with power among other things to award that the said partnership should stand dissolved as from any day in the year 19— which I might fix by my award. NOW KNOW YE, that I, the said [*arbitrator*], having, &c. [*see last precedent*], do make this my award of and concerning the matters so referred to me as aforesaid, in manner following, that is to say:—

Recital of disputes,

—and submission to arbitration.

Award:

1. The said partnership shall be deemed to have been determined on, and shall stand dissolved from the —— day of ——.

that partnership be dissolved;

2. The said A. B., or his personal representatives, shall have, and receive to his or their own use, without the interference of the said C. D., all debts due and owing to the said partnership, from any person whomsoever: AND may use the name of the said C. D. in any action or proceeding to be commenced for the recovery of any such debt or demand.

that A. B. shall receive all the partnership debts; and may use C. D.'s name in any action or suit for recovery thereof;

3. The said A. B. shall pay and discharge all debts, demands, and claims whatsoever, due by, or which may be made against the said partnership, or the said C. D. in respect thereof: AND shall indemnify the said C. D. from all such debts, demands and claims, and from any loss or damage that may be incurred or sustained by the said C. D., by reason of his name being used in any such action or proceeding as aforesaid.

that A. B. shall pay all demands on the co-partnership; and indemnify C. D. therefrom;

4. The said C. D. shall, upon the request of the said A. B., or his personal representatives, deliver up to him or them all and every the books, papers, and writings, which may be in the custody, power, or possession of him the said C. D., in anywise relating to the business of the said partnership.

and from all damages by reason of his name being used;

(*l*) For stamp, see *ante*, p. 147, note.

XVII. AWARD FOR DISSOLUTION OF PARTNERSHIP.

that A. B. shall, at a fixed time and place, pay a sum of money to C. D.

5. The said A. B. shall on the —— day of —— next, at the house of the said C. D., at —— aforesaid, pay to the said C. D. the sum of £——. And the said C. D. shall accept the same sum in full satisfaction and discharge of all demands against the said A. B., up to the day of the date of the said submission.

Costs (*m*).

6. I further award that the costs of this reference (*ante*, p. 148). IN WITNESS, &c.

XVIII. AWARD *of* UMPIRE *as to* COMPENSATION *in respect of* LANDS *taken by a* RAILWAY COMPANY (*n*).

Recitals: that company were authorised to take the lands;

TO ALL TO WHOM THESE PRESENTS SHALL COME, I [*umpire*], of, &c., send greeting. WHEREAS under or by virtue of the —— Railway Act, 18—, and the Public Acts incorporated therewith, the —— Railway Company (hereinafter referred to as "the company") are empowered to take for the purposes of the railway and works authorised by their said Act certain lands and hereditaments situate in the parish of ——, in the county of ——, and particularly described in the schedule hereunder written and delineated in the map or plan hereunto annexed, and therein coloured ——: AND WHEREAS, on or about the —— day of —— last, the company duly gave notice in writing to [*landowner*], of, &c., the owner of the lands and hereditaments described in the said schedule, that they required to take the same for the purposes of the said railway and works, and that they were willing to treat (*o*) for the purchase of the said lands and hereditaments, and as to the compensation to be made to the said [*landowner*] for the

of notice by company of lands required;

(*m*) See also *Gray* v. *Lord Ashburton*, [1917] A. C. 26; and 2 K. & E. 12th ed.

(*n*) The award is generally taken up by the successful party, but in the case of an award under the Lands Clauses Consolidation Act by the company: see *R.* v. *Barton, &c. Rly.*, [1912] 3 K. B. 72. See as to awards under the Act, Russell on Arbitration, 11th ed. 459 *et seq.* The award may be enforced at any time within six years from the date of the award: *Turner* v. *Midland Rail. Co.*, [1911] 1 K. B. 832. As to stamp, see *ante*, p. 149, note.

(*o*) As to compensation after a notice to treat, see *Mercer* v. *Liverpool, St. Helens, &c. Railway Co.*, [1904] A. C. 461; *Zick* v. *London United Tramways, Ltd.*, [1908] 2 K. B. 126; and 2 K. & E. 11th ed. p. 208, note (*b*).

XVIII. AWARD OF UMPIRE IN RESPECT OF LANDS TAKEN BY RAILWAY COMPANY.

damage that might be sustained by him by reason of the execution of the works of the said railway: AND WHEREAS the said [*landowner*], by a notice in writing, dated, &c., claimed the sum of £—— as compensation for the value of the said lands and hereditaments, and for such damage as aforesaid: AND WHEREAS the said company offered to pay to the said [*landowner*] the sum of £—— as such compensation as aforesaid, and have made no other offer: AND WHEREAS the said [*landowner*] by a notice in writing, dated, &c., and delivered to the company before their warrant had been issued to the sheriff to summon a jury in respect of the said lands and hereditaments, signified his desire to have such compensation settled by arbitration: AND WHEREAS the company, by an instrument in writing, under the hand of their secretary, dated, &c., appointed [*arbitrator*], of, &c., to be the arbitrator on their part to whom the dispute as to such compensation as aforesaid should be referred: AND WHEREAS the said [*landowner*], by an instrument in writing, dated, &c., appointed [*arbitrator*], of, &c., to be the arbitrator on his part to whom the said dispute should be referred: AND WHEREAS the said [*arbitrator*] and [*arbitrator*], before entering upon the matters referred to them as aforesaid, by an instrument in writing, dated, &c., appointed me, the said [*umpire*], to be the umpire in the matter of the said arbitration: AND WHEREAS the said [*arbitrators*], by an instrument in writing, dated, &c., duly appointed an extended time for the making of their award, namely, until the —— day of ——, 19—: AND WHEREAS the said [*arbitrators*] disagreed respecting the matters referred to them, and by reason of such disagreement failed to make their award on or before the said —— day of ——, 19—, whereby the matters referred to the said [*arbitrators*] came before me as umpire for determination. NOW KNOW YE that I, the said [*umpire*], having taken upon myself the burthen of the said reference, and having, before entering upon any of the matters referred to me, duly made, and subscribed before a justice duly authorised in that behalf the declaration required by the said Acts, which said declaration is hereunto annexed, and having been attended by the parties and their witnesses, and having viewed the said lands and hereditaments, and having inquired into and fully considered the said matters in dispute and connected therewith, do make this my award in manner following (that is to say):—

of notice by landowner of claim for compensation;

of compensation offered by company;

of notice by landowner of demand of arbitration;

of appointment by company of arbitrator;

of appointment by landowner of arbitrator;

of appointment by arbitrators of umpire;

of extension of time for making award;

of disagreement of arbitrators.

Award.

1. I AWARD and direct that the company shall pay to the said

Award of compensation.

XVIII. AWARD OF UMPIRE IN RESPECT OF LANDS TAKEN BY RAILWAY COMPANY.

[*landowner*], or his personal representatives, the sum of £—— for and in respect of the value of the said lands and hereditaments so to be taken as aforesaid, and for all damage which may be sustained by the said [*landowner*] by the severing of the said lands and hereditaments from the other lands of the said [*landowner*], and by otherwise injuriously affecting such other lands by the exercise by the company of the powers contained in the said Acts.

Costs (*p*).

2. I hereby award and assess the costs of the said [*landowner*] of and incident to this arbitration at the sum of £——, and the costs of and incident to this my award, at the sum of £——.

In witness, &c.

The Schedule above referred to.

Declaration (*q*).

ATTESTATION (*r*).

PRECEDENTS.

I. ATTESTATION *of an* Instrument *not under* Seal. (Common Form.)

Signed by the above-named A. B. in the presence of
C. D., of, &c. [*add address and description*].

(*p*) As to costs, see Lands Clauses Consolidation Act, 1845, s. 34; *Fisher* v. *G. W. Rail. Co.*, [1911] 1 K. B. 551.

(*q*) As to the declaration to be annexed to the award, see the Lands Clauses Consolidation Act, 1845, s. 33.

Attestation generally.

(*r*) Generally speaking, attestation is not essential to the validity of a deed unless it be made in exercise of a power which has prescribed it as a requisite circumstance: 3 Pres. 71. In such a case the terms of the power must be observed; but by the Law of Property Amendment Act, 1859 (22 & 23 Vict. c. 35), s. 12 (now superseded by the Law of Property Act, 1925 (15 Geo. 5, c. 20), s. 159), any deed executed in the presence of and attested by two or more witnesses (in the manner in which deeds are ordinarily executed and attested) is a valid execution of a power of appointment as regards execution and attestation, as in the section expressed. As to how far an abstract should show what instruments have been attested, see Williams on V. & P. 3rd ed. p. 105, note (*q*). As to the attestation of appointments by will, see the Wills

II. ATTESTATION *of a* DEED *or* INSTRUMENT *under* SEAL (*s*). (COMMON FORM.)

II. ATTESTATION OF DEED OR INSTRUMENT UNDER SEAL.

SIGNED, sealed, and delivered by the within named [*or*, above-named] A. B. in the presence of

C. D., of, &c. [*add address and description*].

III. ATTESTATION *of* EXECUTION *of a* DEED *by a* COMPANY *or* CORPORATION *having a* COMMON SEAL (*t*).

THE SEAL of the within named [*or*, above named] company was affixed in the presence of

A. B., *Director*.

E. F., *Secretary*.

Act (1 Vict. c. 26), ss. 9 and 10; and as to foreign wills admissible to probate in England, but not executed and attested in English form, see *Hummel* v. *Hummel*, [1898] 1 Ch. 642; *In re D'Este's Settlement Trusts*, [1903] 1 Ch. 898; *In re Scholefield*, [1905] 2 Ch. 408. But see *Re Simpson*, [1916] 1 Ch. 502 at pp. 508, 509; *Re Lewal's Settlement Trusts*, [1918] 2 Ch. 391 at pp. 396, 397. Certain classes of instruments are required to be attested by statutory enactment, *e.g.*: (i.) Agreements between a master of a merchant ship and an apprentice or seaman: see the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 107, 115, 116, 122, 124. (ii.) Assurances of land or of personalty to be laid out in the purchase of land for charitable purposes: see the Mortmain and Charitable Uses Act, 1888, amended by sect. 29 (4) of the S. L. A. 1925 (15 Geo. 5, c. 18). (iii.) Bills of sale: see the Bills of Sale Act, 1882 (44 & 45 Vict. c. 43), s. 10; *Peace* v. *Brookes*, [1895] 2 Q. B. 451. As to registered land, see L. T. R. 1925, r. 82. As to a purchaser's right to have, at his own cost, the execution of his conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor: see L. P. A. 1925 (15 Geo. 5, c. 20), s. 75; applied to transfers of registered land by the L. R. A. 1925, s. 38. For the previous law, see Williams on V. & P. 3rd ed. p. 688, note (*c*).

Attestation required by statutes.

(*s*) After the 31st December, 1925, sealing alone is not to be deemed sufficient in the execution of deeds: sect. 73 of the L. P. A. 1925; and see note (*x*), *post*, p. 154.

(*t*) See L. P. A. 1925, s. 74. The seal must be affixed in the presence of and attested by the corporation's clerk, secretary, or other permanent officer or his deputy, and a member of the Board of Directors, and in favour of a purchaser this is sufficient. See also sect. 74 (6), which provides that the mode of execution or attestation authorised by the charter, articles or memorandum or other instrument constituting the corporation is also effectual.

IV. ATTESTATION OF EXECUTION OF A DEED, &C.

IV. ATTESTATION *of the* EXECUTION *of a* DEED *in which there are* INTERLINEATIONS (*u*), ERASURES, *or* OBLITERATIONS.

SIGNED (*x*), sealed, and delivered (*y*), by the within named [A. B.] the words "[*words interlined*]" having been previously interlined [*or*, written over obliterations], between [*or*, obliterated in] the fourth and fifth lines of the first skin of the within written deed [*or*, the word "*Henry*," having been previously interlined between the words "*Thomas Johnson*"] and the name —— written [on an erasure in the tenth line of the second skin thereof] in the presence of, &c.

Effect of erasures, &c. after execution.

(*u*) As to alterations, erasures, and interlineations in deeds, see Norton on Deeds, 26 *et seq.*; and 4 Cru. Dig. 407, 4th ed. The result of the cases would seem to be that at the present day no deed would be held to be void on account of any immaterial alteration by whomsoever made after execution; and with respect even to a material alteration, if it be made with the consent of the parties affected, it forms no objection to the validity of the deed, and in any case the invalidity attaches only to the additional matter at any rate where no fraud was intended: see *Aldous* v. *Cornwell*, L. R. 3 Q. B. 573; *Crediton* (*Bishop*) v. *Exeter* (*Bishop*), [1905] 2 Ch. 455; *Howgate and Osborne's Contract*, [1902] 1 Ch. 451. As to execution of a deed of arrangement by creditors after registration, see *Re Batten*, 22 Q. B. D. 685; and Williams on V. & P. 3rd ed. p. 1184, note (*d*). An interlineation (if nothing appears to the contrary) will be presumed to have been made before the execution of the deed, and not after: *Trowell* v. *Castle*, 1 Keb. 22 (5); see also *Fitzgerald* v. *Lord Falconbridge*, Fitzgib. 214. As to alterations in a *bill of exchange*, see *Henman* v. *Dickenson*, 2 Moo. & P. 289; 5 Bing. 183; *Bishop* v. *Chambre*, 3 Car. & P. 55; *Taylor* v. *Mosely*, 6 Car. & P. 273; *Knight* v. *Clements*, 3 Nev. & P. 375. As to erasure in a Bank of England note, see *Suffell* v. *Bank of England*, 9 Q. B. D. 555. The modern practice is, when any alteration, interlineation, or erasure is made in a deed, before it is executed to take notice of it in the attestation: 4 Cru. Dig. 407, 4th ed.; Coventry's Conv. Evidence, 11. It is unnecessary, but not unusual, for the parties and attesting witnesses to initial alterations, &c. in deeds. As to wills, see stat. 1 Vict. c. 26, s. 21.

(*x*) As to whether a deed requires to be signed, it is now provided by sect. 73 of the L. P. A. 1925, that as to deeds executed after the 31st December, 1925, the individual executing the same shall either sign or place his mark thereon, and sealing alone shall not be sufficient.

Delivery of deeds.

(*y*) The usual mode of delivering a deed is to take it up, touch the seal, and say,

"I deliver this as my act and deed."

But a deed may be delivered without words: Co. Litt. 36a; Shep. Touch. 57; so a deed may be delivered by words without any act of

V. ATTESTATION *of the* EXECUTION *of a* DEED *by another* PARTY, *where* INTERLINEATIONS, *&c. have been* NOTICED *in a previous* ATTESTATION.

V. ATTESTATION OF EXECUTION OF A DEED, &C.

SIGNED, sealed, and delivered, by the within named C. D. (the interlineation and erasure noticed in the attestation of the execution by A. B. indorsed hereon, having been previously made), in the presence of, &c.

VI. ATTESTATION *of the* EXECUTION *of a* DEED *by a* BLIND PERSON (*z*).

THE within written indenture was signed, sealed, and delivered by the within named A. B.; the same having been first carefully read over to him (he being blind (*a*) in the presence of us [*witnesses*].

VII. ATTESTATION *of the* EXECUTION *of a* DEED *by a* PERSON DEAF *and* DUMB (*b*).

THE within written indenture was signed, sealed, and delivered, by the within named A. B., who, being deaf and dumb, but capable of reading, the same indenture was first read over by him, and he seemed perfectly to understand [*or, if the witnesses can so attest,* perfectly understood] the same, in the presence of us [*witnesses*].

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delivery: Co. Litt. 36a, 49b. Where a deed is attested to have been "signed, sealed, *and delivered,*" it is not necessary in proving its execution that the witness should be able distinctly to recollect the act of delivery: the presumption will be in favour of the execution having been according to the attestation: *Ball* v. *Taylor,* 1 Car. & P. 417.

(*z*) A person whose only infirmity is blindness, may make a valid deed or will, and could formerly have acknowledged a fine or recovery: *Shulter's case,* 12 Co. 90; Com. Dig. *Capacity,* (C).

A blind person may make a valid deed or will, &c.

(*a*) It is not necessary to the validity of the execution of a will of lands by a blind man, that it should be read over to him in the presence of the attesting witnesses: *Longchamp* d. *Goodfellow* v. *Fish,* 2 Bos. & P. N. R. 415. If a person liable, from blindness, ignorance, or other causes, to be deceived, is induced to execute a deed on the supposition that its effect is different from that which it really is, the deed will be fraudulent and void against him: see *Doe* d. *Lloyd* v. *Bennett,* 8 Car. & P. 124.

The will of a blind person need not be read in the presence of the witnesses.

(*b*) A person born deaf and dumb is not thereby incapacitated to execute

A person born

VIII. ATTESTATION OF EXECUTION OF A DEED, &C.

VIII. ATTESTATION *of the* EXECUTION *of a* DEED *by an* ILLITERATE PERSON.

THE within written deed was sealed and delivered, by the within named A. B., who made his mark thereto, the same being previously read (*c*) over to him in the presence of us [*witnesses*].

IX. ATTESTATION *of a* DEED *executed under a* POWER *of* ATTORNEY.

SIGNED, sealed, and delivered (*d*) by the within named [*attorney*], as the attorney of the within named [*principal*], in the presence of us [*witnesses*].

X. ATTESTATION *of a* DEED *executed by the* COMMITTEE *or* QUASI-COMMITTEE *of a* LUNATIC.

SIGNED, sealed, and delivered by the above named [*committee*], as the committee [*or*, "person appointed to exercise the powers of a committee"], and in the name and on behalf of the above named [*lunatic*], and also in his own name and as his own act and deed, in the presence of us [*witnesses*].

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deaf and dumb is not thereby incapacitated from making a deed or will, &c.

a deed or will, if he has sufficient understanding to give evidence of his assent, either by his own signs or by signs with the assistance of an interpreter: see *Ruston's case*, 1 Leach, Cr. C. 408; and *Steel's case*, 1 Leach, Cr. C. 451. Persons born blind, deaf, and dumb, as they have always wanted the inlets of understanding, are incapable of making either a gift, lease, grant, or will: Co. Litt. 42b; Com. Dig. *Capacity* (D. 4).

Attestation of deed executed by an illiterate party.

(*c*) It is not the practice to vary the form of attestation on account of the person executing it being illiterate. But it might be prudent to state in the attestation the fact of having read the deed to the executing party.

The mode of delivering a deed by an attorney.

(*d*) The usual mode of delivering a deed by an attorney is, to take it up, and say,

"I deliver this as the act and deed of the within named [*principal*]."

XI. ATTESTATION *of a* DEED *executed by* ONE *of the* PARTIES *in his own* RIGHT, *and as the* ATTORNEY *of another of them.*

SIGNED, sealed, and delivered by the above-named A. B. with his own name, and as his own act and deed; and afterwards, as the attorney, and with the name, and as the act and deed, of the above-named C. D., by virtue of a letter of attorney given to him, the said A. B., for that purpose, and dated, &c., in the presence of us [*witnesses*].

ATTORNEY, POWERS OF.

PRELIMINARY NOTE.

THE authority to execute a deed must as a rule be given by a deed in the form of a power of attorney.

A power involving the exercise of personal discretion cannot be delegated, and cannot therefore be exercised by attorney (Farwell on Powers, 3rd ed., p. 499), but a power to do an act merely ministerial may be delegated. (*Ibid.* p. 503.) The maxim, "delegatus non potest delegari," does not apply to general powers. (*Ibid.* p. 505.)

The powers of attorney in the following forms are of the nature of naked powers, *i.e.*, powers conferring no benefit on the donee, but merely enabling him to do some ministerial act on behalf of the donor. Subject to sect. 127 of the Law of Property Act, 1925 (formerly sect. 9 of the Conveyancing Act, 1882) (*see infra*), such powers are in their nature revocable, and are revoked by (1) the death (Co. Litt. 52b) (*Re Williams*, [1917] 1 Ch. at p. 7), or (2) the lunacy (*Drew* v. *Nunn*, 4 Q. B. D. 661), or (3) the bankruptcy (*ibid.* pp. 665, 666) of the donor, and formerly, in the case of a female donor, by her marriage. (*Ibid.*)

The Law of Property Act, 1925, s. 124 (1) (formerly Conveyancing Act, 1881, s. 47), protects a person making any payment or doing act in good faith in pursuance of a power of attorney after the donor has, unknown to such person, died or become subject to disability or bankruptcy, or has revoked the power. A statutory declaration by the attorney as to non-receipt of any notice of revocation of such power may, under sub-sect. (2) of

sect. 124, be proof of such non-revocation. By sub-sect. (4), "power of attorney" includes a power of attorney implied by statute. (See, too, as to trustees, Trustee Act, 1925, s. 29 (replacing Trustee Act, 1893, s. 23.) By sect. 126 of the Law of Property Act, 1925 (formerly sect. 8 of the Conveyancing Act, 1882), a power of attorney given for valuable consideration, and expressed to be irrevocable, may not in favour of a purchaser (including a lessee or mortgagee, see Law of Property Act, 1925, s. 205 (xxi)) be revoked as in the section mentioned, and by sect. 127 of the Act, where a power of attorney, whether for valuable consideration or not, is made irrevocable for a *fixed time* not exceeding one year; then in favour of a purchaser, the power shall not be revoked during that fixed time (see sub-sect. (1) (i)), and any act done within that fixed time under the power shall be valid, notwithstanding the death of the donor or any other event by which the power would be revoked, and so that neither the donee nor the purchaser shall be affected by notice of any event which would revoke the power. (Sub-sects. (ii) and (iii).)

On a sale where the conveyance is to be executed under a power of attorney which has not been made irrevocable for a fixed time under the Law of Property Act, 1925, ss. 126 or 127, it is advisable that the purchase-money be deposited or retained until it is known that the donor is living and that no event has happened to revoke the power before the conveyance is executed, and evidence of this should be preserved for use on any future sale.

As to devolution of a power of attorney given to a purchaser, see sect. 128 of the Law of Property Act, 1925.

The Conveyancing Act, 1881, s. 48 (still in force), provides for the deposit in the Central Office of the Supreme Court of powers of attorney properly verified with the affidavit of declaration verifying the same.

By the Law of Property Act, 1925, s. 125 (1): After making provision as to filing powers of attorney relating to land, it is provided that if the instrument relates to land or a charge registered under the Land Registration Act, 1925, the instrument creating the power or a certified copy is to be filed at the Land Registry, and it is not necessary to file it at the Central Office unless also relating to unregistered land or charge.

A company cannot delegate a discretionary power to an attorney, but may appoint an attorney for purely ministerial pur-

poses (see also as to execution of deeds, the Law of Property Act, 1925, s. 74), and under sect. 78 of the Companies (Consolidation) Act, 1908, a company registered under the Act may appoint an attorney to execute a deed abroad. (See Palmer's Precs., Part I., 12th ed., pp. 1099 *et seq.*)

As to execution of powers of attorney by a trustee in bankruptcy, see the Bankruptcy Act, 1914, s. 55 (4).

As to whether or to what extent a foreign power of attorney is to be governed by foreign or English law, see *Chatenay* v. *Brazilian Submarine Telegraph Co., Limited,* [1891] 1 Q. B. 79.

As to a power of attorney becoming exhausted owing to an unforeseen change of circumstances never contemplated at the time of the execution of the power, see *Russian Commercial and Industrial Bank* v. *Comptoir D'Escompte, &c.* (1922), 38 T. L. R. 414.

As to powers of attorney granted by married women, see sect. 129 of the Law of Property Act, 1925.

See generally as to powers of attorney, Byth. & Jarm., 4th ed., Vol. IV., p. 855; and Key & Elph., 12th ed., Vol. I.

The stamp duties on powers of attorney are regulated by the schedule to the Stamp Act, 1891, *tit.* "Letter or Power of Attorney," which runs as follows:—

LETTER OR POWER OF ATTORNEY and COMMISSION, FACTOR'S MANDATE, or other instrument of the nature thereof.

	£	*s.*	*d.*
(1.) For the sole purpose of appointing or authorising a proxy to vote at any one meeting at which votes may be given by proxy, whether the number of persons named in such instrument be one or more	0	0	1
(2.) By any petty officer, seaman, marine, or soldier serving as a marine, or his representatives, for receiving prize money or wages	0	1	0
(3.) For the receipt of the dividends or interest of any stock:			
Where made for the receipt of one payment only	0	1	0
In any other case	0	5	0

	£	s.	d.
(4.) For the receipt of any sum of money, or any bill of exchange or promissory note for any sum of money not exceeding 20*l.*, or any periodical payments not exceeding the annual sum of 10*l.* (*not being hereinbefore charged*) . .	0	5	0
(5.) For the sale, transfer, or acceptance of any of the Government or Parliamentary stock or funds:			
Where the value of the stocks or funds does not exceed 20*l.* . . .	0	5	0
In any other case	0	10	0
(6.) Of any kind whatsoever not hereinbefore described	0	10	0

Exemptions.

(1.) Letter or power of attorney for the receipt of dividends of any definite and certain share of the Government or Parliamentary stocks or funds producing a yearly dividend less than 3*l.*

(2.) Letter or power of attorney or proxy filed in the Probate Division of the High Court of Justice in England or Ireland, or in any ecclesiastical court.

(3.) Order, request, or direction under hand only from the proprietor of any stock to any company or to any officer of any company or to any banker to pay the dividends or interest arising from the stock to any person therein named.

(4.) [Added by the Finance Act, 1917, s. 30 (7 & 8 Geo. 5, c. 31).]

Letter or power of attorney for the sale, transfer, or acceptance of any of the Government or parliamentary stocks or funds.

[This section is to be deemed to have been in force as from the 26th March, 1917].

And see sects. 80 and 81.

COMMON FORMS.

COMMON FORMS.

I. KNOW ALL MEN BY THESE PRESENTS, that [*in consideration of the premises, or, state the consideration*], I, A. B., of, &c., do hereby [irrevocably] appoint C. D., of, &c., my attorney for me in my name to, &c.

Commencement and witnessing part where there are no recitals.

II. KNOW ALL MEN BY THESE PRESENTS, that in consideration, &c., we, A. B., of, &c., C. D., of, &c., and E. F., of, &c., do and each of us doth hereby [irrevocably] appoint G. H., of, &c., J. K., of, &c., and L. M., of, &c., and any one or more of them, our attornies and attorney for us the said A. B., C. D., and E. F., and any one or more of us, and in the names or name of us or any one or more of us to, &c.

The same where there are several principals and attornies.

III. TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., sends greeting: WHEREAS [*recitals*]: NOW THESE PRESENTS WITNESS, that in consideration, &c., he the said A. B. doth hereby [irrevocably] appoint C. D., of, &c., his attorney for him and in his name to, &c.

Commencement and witnessing part where there are recitals.

IV. TO ALL TO WHOM THESE PRESENTS SHALL COME, A. B., of, &c., C. D., of, &c., and E. F., of, &c., send greeting: WHEREAS [*recitals*]: NOW THESE PRESENTS WITNESS, that in consideration, &c., they the said A. B., C. D., and E. F., do and each of them doth hereby [irrevocably] appoint G. H., of, &c., J. K., of, &c., and L. M., of, &c., and any one or more of them, the attornies and attorney of the said A. B., C. D., and E. F., and any one or more of them, for them the said A. B., C. D., and E. F., and any one or more of them, and in their or his names or name, to, &c.

The same where there are several principals an attornies.

V. TO ENFORCE, resist, allow, remit, settle, compromise, or refer to arbitration, any claim by or against me [*or*, us or either of us] in respect of the premises.

Power to enforce or resist claims.

VI. TO INSTITUTE and carry on, or discontinue and to defend, or compromise, or refer to arbitration, or to confess judgment, or allow judgment to go by default in any action or legal proceeding in relation to the premises or any of them.

Power to bring actions, &c.

COMMON FORMS.

Power to receive money, give receipts, &c.

VII. To DEMAND, receive, take transfers of, and recover or allow in account, any money or property belonging to me [*or*, us or any one or more of us], and to give receipts and releases, and in a proper case indemnities, for or in respect of any money or property so received or allowed in account by, or transferred or delivered to, the attorney [*or*, attorneys or any one or more of them] under or by virtue of these presents.

Power to draw bills, &c.

VIII. To DRAW, accept, indorse, give, make, or negotiate, any cheque, bill, note, guarantee or other security for any of the purposes hereof.

To vote at meetings (*a*).

IX. To VOTE at the meetings of any company or companies, or otherwise act as my proxy or representative in respect of any shares which I now hold or may hereafter hold therein, and to execute any proxies or other instruments in my name or on my behalf.

Power to execute instruments, &c.

X. To EXECUTE and do, or concur in or cause to be executed and done, all such deeds, instruments, and things in relation to the premises as in the absolute discretion of the said [attornies or] attorney shall seem expedient as fully and effectually as I [*or*, we or any one or more of us] could have done if personally present.

General words.

XI. AND GENERALLY to execute and do all such deeds and things in relation to the premises as the said [attornies or] attorney shall think expedient, as fully and effectually as I [*or*, we or any one or more of us] (*b*) could have done if personally present.

Power to appoint substitutes.

XII. AND ALSO from time to time to substitute and appoint any person or persons to act under or in place of the said [attornies or] attorney in all or any of the matters aforesaid, and from time to time every such substitution and appointment at pleasure to revoke.

The same, another form.

XIII. AND THE SAID [*principal*] hereby empowers his said [attornies or] attorney from time to time, by any attested writing,

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(*a*) *Colonial Gold Reef* v. *Free State Rand*, [1914] 1 Ch. 382.

(*b*) If the deed contains recitals, say,

"as the said [*principal*]," *or*

"as the said [*principals*], or any one or more of them, could," &c.

under [their or] his [hands or] hand, to substitute and appoint an attorney or attornies under [them and] him, with the same powers as, or with more limited powers than, are hereinbefore expressed to be hereby given, and from time to time such substitute or substitutes at pleasure to remove, and another or others, by such writing as last aforesaid, to appoint.

Agreement to ratify the attorney's acts.

XIV. And he the said [*principal*] hereby ratifies and confirms [and covenants to ratify and confirm] whatsoever his said [attornies or] attorney, or [their or] his substitute or substitutes, shall do or cause to be done in or about the premises by virtue of these presents.

The same where there are several principals.

XV. And they the said [*principals*] do and each of them doth hereby ratify and confirm [and jointly and severally covenant to ratify and confirm] whatsoever the said [attornies or] attorney, or [their or] his substitute or substitutes, shall do or cause to be done in or about the premises by virtue of these presents. [*If the power is to be exercised abroad the following clause may be added:* Including in such confirmation whatsoever shall be done between the time of the decease of the said [*principal*] (*c*) or the revocation by other means of these presents, and the time of such decease or revocation becoming known to the said [attornies or] attorney [or their] or his substitute or substitutes.]

Indemnity clause.

XVI. And it is hereby declared, that the attornies for the time being acting under these presents shall be respectively chargeable only with such moneys or property as they shall respectively actually receive, notwithstanding their signing any receipt for the sake of conformity, and shall not be answerable the one for the other of them, nor for the act or default of any substitute, deputy, agent, banker, or broker into whose hands any moneys or property shall come under these presents, nor for any loss whatsoever, unless the same shall happen through their own wilful default respectively.

(*c*) If there are more principals than one, say, "between the time of the decease of the survivor of the said [*principals*] or, &c."

COMMON FORMS.

Appointment of another attorney in case of the incapacity, refusal, or death, of the original attornies.

XVII. And in case of the death of the said attornies, or either of them, or of their or his inability (through absence, illness [becoming outlawed, bankrupt, or insolvent], or otherwise) or refusal to execute and do such deeds and things or any of them, then I hereby appoint [A. B.], of, &c., to act as my attorney in the stead of the said [C. D.] and [E. F.] [*the original attornies*], or either of them, as the case may require, after such death or during such inability or refusal to act (as the case may be), and so long and so far as such inability or refusal shall continue or extend, unless and until all the powers expressed to be hereby given shall be determined, in like manner as if the name of the said [A. B.] had been inserted in these presents, instead of the names or name of the attornies or attorney so being absent, or becoming unable, or refusing, or dying as aforesaid.

PRECEDENTS.

I. POWER *of* Attorney *to* Execute *a* Deed (*d*).

KNOW ALL MEN by these presents, that I [*principal*], of, &c., do hereby appoint [*attorney*], of, &c., my attorney, for me and in my name, and as my act and deed, to sign, seal, and deliver a certain deed already prepared and intended to be dated the —— day of ——, 19—, and to be made between me, of the one part, and [A. B.], of, &c., of the other part; whereby certain freehold messuages and hereditaments, situate at ——, in the county of ——, and known as ——, are or are intended to be demised by me to the said [A. B.], by way of mortgage to secure the payment of a sum of £——, and interest thereon at the rate of —— per cent. per annum, as therein mentioned, and to receive from the said [A. B.] the sum of £——, being the sum by the said deed expressed to be paid to me, and also from time to time to appoint any substitute or substitutes to act under or in place of the said attorney in all or any of the matters aforesaid, and from time to time every such appointment at pleasure to revoke. And I the said [*principal*] hereby ratify and confirm, and agree to ratify and confirm, whatsoever the said attorney, or

Power to appoint substitutes.

Ratification of acts of attorney, &c.

(*d*) Stamp, 10*s*.

his substitute or substitutes, shall do or cause to be done in or about the premises by virtue of these presents.

I. TO EXECUTE A DEED.

[PROVIDED ALWAYS, that these presents shall be irrevocable for a period of —— calendar months from the date hereof] (*e*).

Proviso, making power irrevocable for a period.

IN WITNESS, &c. (*f*).

II. POWER *of* ATTORNEY *to* RECOVER *a* DEBT (*g*).

KNOW ALL MEN BY THESE PRESENTS (*h*), that I [*principal*], of No.—, Cheapside, in the City of London, linen merchant [*or*,

---

(*e*) See L. P. A. 1925, s. 127; Preliminary Note, *ante*, p. 158.

(*f*) As to the execution of a deed by attorney in his own name by the authority of the donor, see L. P. A. 1925, s. 123. The most correct form is thus:

Execution and form of attestation where a deed is executed by attorney.

"A. B. [*the principal*], by C. D. [*the attorney*]."

Or the execution may be in the following form:

"C. D. [*the attorney*], by the authority of A. B. [*the principal*]."

The deed, of course, should be prepared in the ordinary way in the name of the principal. For the form of attestation, see *ante*, p. 156; and 1 K. & E. 11th ed. p. 212; 12th ed. vol. i.

The testimonium may be thus:—"In witness whereof [*attorney*], of, &c., by virtue of a power of attorney under the hand and seal of the said [*principal*], dated the —— day of ——, hath hereunto set the hand and seal of the said [*principal*], the day and year first above written [*or* this —— day of ——]."

Testimonium of a deed executed by attorney.

In the case of registered land the power should run as follows:—

Registered land.

"In my name and as my act and deed to sign and deliver [a charge for £——], already prepared and intended to be dated the —— day of ——, on all the land registered under the Land Registration Act, 1925, under the heading, District ——, Parish ——, Title No. ——, to [*mortgagee*], of," &c.

(*g*) If the debt is to be recovered in a British colony or dependency the execution should be attested by two witnesses, and a declaration by one of the witnesses in support of the claim and as to execution, under sect. 15 of the Statutory Declarations Act, 1835, will be required, for a form of which see *post*, Precedent XIII., p. 187; but in the case of foreign countries and some colonies special formalities are required to authenticate the power. Enquiry as to this should be made from the consulate or the colonial agents, as the case may be.

(*h*) Stamp, 5*s*., if the debt is under 20*l*.; otherwise, 10*s*.

II. TO RECEIVE A DEBT IN THE WEST INDIES.

as the case may be], hereby appoint [*attorney*], of [Kingston, in the Island of Jamaica] [*description*], my attorney, for me and in my name to demand, sue for and recover all and every sums and sum of money that are or is now due and owing to me from and by [*debtor*], late of [the City of London], but now of [Kingston aforesaid] [*description*] (*i*), and on receipt or payment thereof, or of any part thereof, for me and in my name acquittances or other sufficient discharges for the same to make, sign, and deliver, and to do all other lawful acts and things in and about the premises, as effectually as I could do if personally present; and whatsoever the said [*attorney*] shall do, or cause to be done, in or about the premises by virtue of these presents, I the above-named [*principal*] hereby agree to ratify and confirm.

Power to be irrevocable.

[These presents shall be irrevocable for a period of —— calendar months from the date hereof (*k*).]

IN WITNESS, &c.

Signed, sealed and delivered by the said [*principal*], in the presence of [*Two Witnesses*]. } [*Principal*] (L. S.)

(*i*) Or the debt may be described specifically as—

Variation, according to the nature of debt.

"All that debt or sum of £——, now due and owing to me from [*debtor*], of, &c., for goods sold and delivered by me to the said [*debtor*], as appears by the bill or account hereunto annexed signed by me."

Or if the debt arose on a bill of exchange—

"All moneys due and owing to me by virtue of the bill of exchange hereunto annexed, dated the —— day of ——, drawn by me upon, and accepted by the said [*debtor*], for the sum of £——, payable —— months after the date thereof, including as well the principal money mentioned in the said bill, as the interest, commission, and all other charges and expenses which shall have become due thereon, or have been incurred by the non-payment thereof."

Or if the debt is secured by mortgage—

"All moneys due and owing for principal, interest, and costs on the security of a mortgage dated, &c., and made between [*parties*]."

(*k*) For New South Wales or Queensland, say,

"These presents shall remain in force until notice of my death

III. POWER *of* ATTORNEY *to receive a* LEGACY (*l*), *with* POWER *to* CONSENT *to an* ABATEMENT *in case of a* DEFICIENCY *of* ASSETS; *and, if required, to give a* BOND *to the* EXECUTORS *to* REFUND.

III. TO RECEIVE A LEGACY.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*m*) [*principal*], of, &c., sends greeting: WHEREAS [*testator*], late of, &c., deceased, by his will dated, &c., and proved, &c., gave and bequeathed to the said [*principal*] the sum of 100*l.*, to be paid within the space of twelve months after his decease, and appointed [*executors*], of, &c., executors in trust of his said will: NOW THIS POWER OF ATTORNEY WITNESSES that the said [*principal*] hereby appoints [*attorney*], of, &c., his attorney, for him and in his name to demand and receive of and from the said [*executors*], or either of them, or any other person or persons whom it may concern, the said legacy or sum of 100*l.* so bequeathed as aforesaid to the said [*principal*], together with any interest which may be due for the same, and upon payment of the same legacy and interest to give an effectual receipt and discharge for the same; AND to accept such sum or sums of money in satisfaction and discharge of the same legacy, as the said attorney shall be of opinion (regard being had to the amount of the assets of the said [*testator*]), ought to be paid thereon; AND ALSO for and in the name and as the act and deed of the said [*principal*], if the said attorney shall think proper, and he shall be required so to do, to execute any bond or covenant for the repayment of the said legacy, or of a due proportion thereof, in case the estate and effects of the said [*testator*] shall subsequently to the payment thereof prove insufficient to discharge the debts of the said [*testator*], and also the legacies bequeathed by his said will, in the same rate and proportion as the said legacy shall have been paid; AND ALSO to commence and prosecute any such action or other proceeding for

Recital of will.

Testatum.

Power to receive legacy with interest.

To give receipt.

To consent to abatement.

To give bond to refund.

To bring suits.

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or of my having revoked the same shall have been received by the said [*attorney*]."

In Victoria no such provision is required: see Victoria Statutes, 54 Vict. 1103, s. 196; Key & Elph. 11th ed. Vol. I. p. 226, note (*a*).

(*l*) As to whether an executor would be safe in paying a legacy to an attorney with a general power to receive moneys, see *Carr* v. *Eastabrook*, 2 Cox, 390; *Yerbury* v. *Head*, *ibid.* 391; and see *Fell* v. *Jones*, 17 Beav. 521.

(*m*) Stamp, 10*s*.

III. TO RECEIVE A LEGACY.

the recovering payment of the same legacy, or any part thereof, as the said [*attorney*] shall think proper; AND ALSO to appear for the said [*principal*] in any action or other proceeding that shall or may be instituted touching the administration of the estate and effects of the said [*testator*], in which the said [*principal*] shall be made defendant, and to defend the same, and generally to take and concur in such proceedings, in regard to any such action as the said [*attorney*] shall deem expedient; AND ALSO to submit any matter or matters connected with the claim of the said legacy, or the administration of the estate of the said [*testator*], to arbitration, and in the name of the said [*principal*] to execute and enter into any bond or bonds, covenant or covenants, to abide by and perform the award; AND GENERALLY to do, perform, and execute all matters and things in and about the premises, as fully and effectually as the said [*principal*] might or could have done if personally present. [*Power to appoint substitutes, agreement to ratify the acts of the attorney and substitute, and proviso making power irrevocable for a period; see* ante, *Precedent I., p.* 165.]

To defend suits.

To submit to arbitration.

General words.

IN WITNESS, &c.

IV. POWER *of* ATTORNEY *by an* EXECUTOR *residing* ABROAD *to* PROVE *a* WILL *in this* COUNTRY.

In the High Court of Justice.
Probate Division.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*n*), I [*principal*], late of, &c., but now residing at ——, in the kingdom of Italy, send greeting; WHEREAS [*recite will appointing principal to be executor, death of testator, and probate of his will*]: NOW THIS POWER OF ATTORNEY WITNESSETH that I, the said [*principal*], hereby appoint [*attorney*], of No. ——, Lincoln's Inn Fields, London, solicitor, to be my attorney for me and in my name, or otherwise to appear before the Probate Division of the High Court of Justice, or before some other court or judge of competent jurisdiction, and to apply for and procure letters of administration with the said will annexed, of all the [real] and personal estate of the said [*testator*], deceased, to be

Recitals:

Testatum.

Appointment of attorney.

(*n*) Stamp, 10*s*.

granted and committed to him, either as my attorney or otherwise, until I shall apply for and procure probate of the said will to be granted and committed to me; AND, for that purpose, to execute such bond, covenant, or other obligation as shall be required upon the grant of such letters of administration as aforesaid; AND GENERALLY, for me, and in my name, and on my behalf, to do, perform, execute, and accomplish every other act, deed, matter, and thing whatsoever, which my said attorney shall think necessary or proper to be done, for the purposes aforesaid, during my absence from England, as fully and effectually as I might or would do if personally present [*power to appoint substitutes, and agreement to ratify*, ante, *pp.* 162, 163.]

IN WITNESS, &c.

V. POWER *of* ATTORNEY *to take out* ADMINISTRATION *of the* PROPERTY *of an* INTESTATE *in* INDIA, *and to* REALISE *the same* (*o*).

TO ALL TO WHOM THESE PRESENTS SHALL COME (*p*), [*principal*], of, &c., sends greeting: WHEREAS [A. B.], late of ——, Recital of death of intestate, and kinship of principal.

(*o*) Under the Indian Probate and Administration Act V. of 1881, s. 23, administration of the estate of an intestate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable to the case of such deceased, would be entitled to the whole or any part of such deceased's estate. When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them. When no such person applies, it may be granted to a creditor of the deceased. With regard to the persons entitled to the deceased's estate, the rule in India is the same as in England. By the Succession Act X. of 1865, "Succession to the immoveable property in British India of a person deceased is regulated by the law of British India, wherever he may have had his domicile at the time of his death. Succession to the moveable property of a person deceased is regulated by the law of the country in which he had his domicile at the time of his death." The title to grants of administration of the estate and effects of a deceased person, as regards his immoveable property, wherever his domicile may have been, and as regards his moveable property, if he was domiciled in British India, is regulated by sects. 200—207 of the Act X. To whom administration may be granted.

(*p*) Stamp, 10*s*. The Courts in India do not regard the question as to whether a power of attorney intended to operate in India complies with the Stamp Laws in England: *Re Goods of McAdam*, I. L. R. 23 Calc. 187.

V. BY ADMINISTRATOR TO TAKE OUT ADMINISTRATION OF INTESTATE'S PROPERTY IN INDIA.

died on the —— day of ——, 19—, at —— aforesaid, a bachelor and intestate, seised of and entitled to lands and hereditaments in the Province of ——, in India, and the said [*principal*], as the eldest brother of the said [A. B.], and his sole next of kin (their father being dead), is by the acts in operation in India, entitled to administer the moveable and immoveable property therein of the said [A. B.], deceased: NOW THIS POWER

Testatum. OF ATTORNEY WITNESSETH that, in consideration of

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of 1865; and under the Act V. of 1881, s. 30 (incorporating sect. 214 of the Act X. of 1865), when a person entitled to administration is absent from the province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person until the principal shall obtain letters of administration for himself: see sect. 28. The attorney or agent applying for letters of administration must be within the jurisdiction of the Court: *In the goods of Nesbitt*, 4 Beng. L. R. App. 49. "Province," as defined in this Act, includes any division of British India having a Court of the last resort: see sect. 3; but it does not include Assam: *Thakoor Kristo Surma Adhikaree* v. *Basoobel Goshamee*, 12 W. R. 424. By sect. 5 of the same Act, "When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the province, whether in the British Dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed." And where the executors are absent from the province, letters of administration, with such copy annexed, may be granted to their agent limited as in the case of an intestacy: see sect. 28. A power of attorney to obtain letters of administration with a copy of the will annexed should therefore be accompanied by an office copy of the will and act of probate exemplified under the seal of the Probate Division of the High Court of Justice. With regard to the authentication of powers of attorney, the Act I. of 1872, sect. 85, enacts that, "The Court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a notary public, or any Court, judge, magistrate, British consul, or vice-consul, or representative of Her Majesty, or of the Government of India, was so executed and authenticated." The Powers of Attorney Act VII. of 1882, contains provisions with regard to powers of attorney by married women, the deposit of original instruments creating powers of attorney, the execution of instruments under powers of attorney, and payments by an attorney under a power without notice of the death, &c. of the principal. Persons holding general powers of attorney from parties out of the jurisdiction of the Indian Courts, are recognised as agents of such parties for the purpose of entering appearances and making applications, &c. in such Courts on behalf of their principals: see Act XIV. of 1882, ss. 36, 37.

Presumption as to powers of attorney.

the premises, he, the said [*principal*], doth hereby appoint [*attorney*] the attorney of him the said [*principal*] for him, and in his name, or in the name of the said attorney, or otherwise, to take all usual and necessary steps to obtain from the proper Court or Courts, office or offices in India, letters of administration limited to the moveable and immoveable property of or to which the said [A. B.] died possessed or entitled in India; AND for him the said [*principal*], and in his name, or otherwise, to give and execute every such bond, covenant, or other obligation, as shall be required, and generally to do all things necessary or expedient for obtaining such letters of administration as aforesaid, or for constituting the said [*principal*] or the said [*attorney*] as his attorney, the administrator of the said moveable and immoveable property, and the legal representative of the said [A. B.] in India: AND ALSO if and when letters of administration of the moveable and immoveable property of the said [A. B.] shall have been obtained, absolutely to sell and dispose of the lands, tenements, and hereditaments which shall form part of the real estate of the said [A. B.] as aforesaid, either together or in parcels, and either by public auction or private contract; AND upon any such sale, to buy in or rescind any contract for sale, and to resell without being responsible for any loss occasioned thereby, and to make any such sale as aforesaid, subject to such special or other conditions of sale as the said [*attorney*] shall consider advisable or expedient; and to give credit for the whole or any part of the purchase-money upon such security as the said [*attorney*] shall think proper; and to get in, recover, and receive all debts, whether secured or otherwise, due or owing to the estate of the said [A. B.] in India, and upon payment of any moneys owing to the said estate on mortgage or other security, to execute such reconveyances or releases of the property so mortgaged or charged as may seem proper or expedient; and to pay and discharge all debts and liabilities due or owing from the estate of the said [A. B.] to the Government of India, or to any person, firm, company, or corporation in India; AND for the purposes aforesaid, or any of them, to execute and do all such contracts, conveyances, assurances, releases, deeds, matters, and things as the said [*attorney*] shall deem expedient; AND the said [*principal*] doth hereby declare, that every receipt in writing of the said [*attorney*] for

V. BY ADMINISTRATOR TO TAKE OUT ADMINISTRATION OF INTESTATE'S PROPERTY IN INDIA.

Appointment of attorney;

to obtain administration;

to execute bonds, &c.;

to sell the estate;

to execute conveyances;

to give receipts for purchase-moneys;

V. BY ADMINISTRATOR TO TAKE OUT ADMINISTRATION OF INTESTATE'S PROPERTY IN INDIA.

any money paid to him under these presents, or in the execution of the powers hereof, shall sufficiently discharge the person or persons paying the same therefrom, and from being concerned to see to the application, or being answerable for the loss or misapplication thereof; AND the said [*principal*] hereby further authorises and empowers the said [*attorney*], in the name of him the said [*principal*], or otherwise, to commence, prosecute, abandon, defend, and compromise in any court of law, equity, or other judicature in the said Province of ——, or to refer to arbitration all or any proceedings or claims touching the property and liabilities of the said [A. B.], deceased, in India, or any of the matters aforesaid; AND ALSO until the sale and conversion into money of the whole of the said premises, to manage and deal therewith as the said [*attorney*] shall think fit, and to appoint agents and employ servants for the purposes aforesaid, or any of them, on such terms and with such salaries, wages, and allowances as the said [*attorney*] shall deem proper; AND the said [*principal*] doth hereby further authorise and empower the said [*attorney*], in the name of him the said [*principal*], and as his act and deed, to acknowledge this present power of attorney, and to register and record the same in the proper office, and to execute, make, and do every such other deed, act, matter, or thing whatsoever, which may be necessary or expedient for the purpose of giving validity or effect to this present power of attorney, according to the laws and usages of India, or of any part thereof; AND GENERALLY for the said [*principal*], and in his name or otherwise, to do everything requisite or convenient for all or any of the purposes aforesaid, as fully and effectually as the said [*principal*] himself could do if personally present; AND the said [*principal*] hereby ratifies, confirms, and allows and covenants to ratify, confirm, and allow, whatsoever the said [*attorney*] shall do or cause to be done in or about the premises, by virtue of these presents. AND the said [*principal*] hereby declares that this power of attorney shall be irrevocable for [twelve] calendar months from the date hereof.

to bring and defend actions;

to manage estate till sale;

to register the power.

General words.

Agreement to ratify.

IN WITNESS, &c. (*q*).

(*q*) This power must be executed before and authenticated by a notary or other qualified person: see *ante*, note (*o*), pp. 169, 170.

VI. POWER *of* ATTORNEY *by* PERSONAL REPRESENTATIVES *and* EXECUTORS *in* ENGLAND, *authorising certain* PERSONS *in a* COLONY *to* TAKE POSSESSION *of and* RECEIVE *the* PROPERTY *and* DEBTS *of the* TESTATOR *there* (*r*).

VI. BY EXECUTORS TO TAKE POSSESSION OF PROPERTY, &C.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*s*), [*principal*], of, &c., and [*principal*], of, &c., send greeting.

WHEREAS [A. B.], late of, &c., deceased, duly made and executed his will dated the —— day of ——, 19—, and thereby devised all his real estate whatsoever and wheresoever to the said [*principals*] upon the trusts therein mentioned, and appointed the said [*principals*] to be the executors of his said will.

Recitals: of will appointing principals, trustees, and executors thereof;

AND WHEREAS the said [A. B.] died on the —— day of ——, 19—, without having revoked or altered his said will, and the same was on the —— day of ——, 19—, duly proved in the [Principal] Probate Registry of the High Court of Justice by the said [*principals*].

of death of testator, and probate of will;

AND WHEREAS part of the real estate of the said [A. B.] is situate in or about ——, in the colony of —— (*t*), and part of his personal estate is there outstanding.

that part of property is in the colony.

NOW THIS POWER OF ATTORNEY WITNESSETH that the said [*principals*] do, and each of them doth, hereby appoint [*attorneys*], of, &c., and any one or more of them, jointly and severally, the attorneys and attorney of them and each of

Testatum.

Principals, as devisees and executors, appoint attorneys jointly and severally.

(*r*) Stamp, 10*s*.

(*s*) The above power may be adapted with slight alteration to the case of property in India or in any foreign country. An English will is proved in India by production of an office copy of the will and act of probate exemplified under the seal of the Probate Division: see *ante*, p. 169, note (*o*).

(*t*) Australia is now "the Commonwealth of Australia"; New Zealand, "the Dominion of New Zealand"; Canada, "the Dominion of Canada": see, as to the various colonies, &c., Anson's Law and Custom, 5th ed; Ridge's Const. Hist. 3rd ed. p. 423. "The said Commonwealth" or "the said Dominion" must be substituted for "the said Colony" where necessary.

VI. BY EXECUTORS TO TAKE POSSESSION OF PROPERTY, &C.

them, for them and each of them, and in the names and name of them and each of them, as such devisees and executors as aforesaid, or in the names or name of the said attorneys, or any one or more of them, or otherwise as the case shall require, for the following purposes:—

To obtain administration with the will annexed.

1. To take all usual and necessary steps to obtain from the proper Court or Courts in the colony of —— aforesaid letters of administration with the said will of the said [A. B.] annexed, limited to the moveable and immoveable property of or to which the said [A. B.] died possessed or entitled in the said colony; AND for them the said [*principals*], and in their names or otherwise, to give and execute every such bond, covenant, or other obligation as shall be required, and generally to do all things necessary or expedient for obtaining such letters of administration as aforesaid, or for constituting the said [*principals*], or the said [*attorneys*], as their attorneys, administrators with the will annexed of the said moveable and immoveable property, and the legal representatives of the said [A. B.] in the said colony.

To take possession of testator's real and personal estate in the colony.

2. When letters of administration of the moveable and immoveable property of the said [A. B.] shall have been obtained, to demand, take and receive possession and seisin of all and every the [plantations], lands, hereditaments, and real and personal estate whatsoever, in ——, now vested in or belonging to the said [*principals*], as the personal representatives of the said [*testator*], deceased, or wherein or whereto they as such devisees and executors as aforesaid, or otherwise howsoever, or either of them have or has any estate, right, title, or interest. AND ALSO of all live and dead stock, utensils, and implements to the said [plantations], lands and hereditaments, or any of them, belonging or appertaining.

And to receive the rents and pay all charges.

3. To take upon themselves or himself the whole management or direction of the said [plantations], lands and hereditaments, and to receive and take the rents, issues, and profits thereof, and of every part thereof, and to pay and defray all necessary charges and expenses in and about the said [plantations], lands, hereditaments, and premises, and the supplying and keeping up the stock thereof respectively, and to remit and consign to them the said [*principals*] the produce and profits thereof, or other-

wise to dispose thereof in such manner as they shall from time to time direct.

VI. BY EXECUTORS TO TAKE POSSESSION OF PROPERTY, &C.

4. To ask, demand, sue for, recover, and receive of and from all and every persons and person in or belonging to the said colony, whom it doth or shall or may concern, all arrears of rent and sums of money, debts, goods, merchandise, and effects whatsoever, now due, owing and payable, or belonging, or which shall or may at any time or times hereafter become due, owing, payable, or belonging to them the said [*principals*], as such devisees and executors as aforesaid, or otherwise howsoever, or to either of them.

Also to receive and recover debts owing to the testator.

5. To sign, seal, execute, and deliver such receipts, releases, acquittances, or other sufficient discharges as shall be thought requisite for all or any such moneys and effects as aforesaid.

And to give discharges.

6. To examine, settle, adjust and balance all accounts which now are, or shall or may at any time hereafter be open or depending between the said [*principals*], as such devisees and executors as aforesaid, or either of them, and any other person or persons in or belonging to the said colony, and to receive and pay (as the case may require) the balances thereupon found due.

To adjust accounts.

7. To compromise or refer to arbitration, or otherwise compound all or any matters in difference between the said [*principals*], as such devisees and executors as aforesaid, or either of them, and all and every other person and persons whomsoever, in or belonging to the said colony, and to perform and fulfil such award or awards, agreement or agreements, as shall be thereupon made.

To compromise and refer to arbitration.

8. In the name or names of the said [*principals*], or either of them, and as their or his act and deed to acknowledge this power of attorney, and register and record the same in the proper office in the said colony, and do or procure to be done every thing which may be required for authenticating and giving effect to this power according to the laws of the said colony.

9. AND GENERALLY to do, perform, and execute all such further and other acts, deeds, matters, and things as shall be requisite or necessary in or about the premises, or any part thereof, in as full, effectual, and beneficial a manner, as the said [*principals*], or either of them, might or could do, if they were personally present.

General words.

VI. BY EXECUTORS TO TAKE POSSESSION OF PROPERTY, &c.

10. And also from time to time to substitute and appoint any person or persons to act under or in place of the said attorneys or attorney, in all or any of the matters aforesaid, and from time to time such substitution and appointment at pleasure to revoke.

To appoint substitutes.

Agreement to ratify.

And they the said [*principals*] hereby confirm and ratify, and agree to confirm and ratify whatsoever their said attorneys or attorney, or their or his substitute or substitutes, shall do or cause to be done in or about the premises by virtue of these presents.

In witness, &c. (*u*).

VII. POWER *of* Attorney *from a* Person *having large* Estates *in* England, *previously to his going* Abroad, *containing very* Extensive *and* Special Powers *to* Demise *and* Manage Estates, Appoint Bailiffs, *exercise* Powers *of* Entry, &c., *in* Leases, Proceed *against* Tenants, &c.; Collect Rents, Settle Debts, Bring Actions, *refer to* Arbitration, Sell, Mortgage, *or* Charge *the* Estates *in* Great Britain, *and* otherwise *to* act *in his* Concerns (*x*).

TO ALL TO WHOM these presents shall come, I [*principal*], late of the Island of Saint Vincent, but now of ——, in the county of ——, in England, esquire, send greeting.

Recitals.

Whereas I, the said [*principal*], am seised and possessed of or otherwise entitled to certain freehold and leasehold farms, lands, and hereditaments, and personal estate and effects in England [Great Britain], and several persons residing in England are indebted to me in various sums of money.

And whereas I am now about to leave England and to reside in ——, and am desirous of appointing a proper person as my attorney, with such powers and authorities as may be necessary or convenient for enabling him, during my absence (*y*) from

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(*u*) For declaration by witness and certificate of notary verifying the execution of this deed, see *post*, Precedents XIII. and XIV., pp. 187, 188.

(*x*) Stamp, 10*s*.

(*y*) As to the effect of a recital limiting the duration of the power, see *Danby* v. *Coutts & Co.*, 29 Ch. D. 500.

England, to manage and conduct my property and affairs as effectually as if I were personally present.

VII. TO MANAGE, LEASE, CHARGE, AND SELL ESTATES, PAY DEBTS, AND RAISE MONEY, &c.

NOW THEREFORE KNOW YE, as follows:—

Testatum.

1. I, the said [*principal*], hereby appoint [*attorney*], of, &c., [*description*], my attorney for me, and in my name and on my behalf or otherwise to do all or any of the things following, that is to say:—

Appointment of attorney.

(1) To take possession of, let and demise or, if he shall think proper, to keep in his own hands, manage, cultivate, and improve my freehold and leasehold messuages, farms, lands, and hereditaments, in —— and elsewhere in Great Britain; and, in particular, to cut timber or underwood, work quarries or mines (whether now open or not), erect, pull down and re-erect, or repair houses or buildings, fences, and other erections, make drains and roads, and dedicate any roads, when made, to the public, insure houses and other property against loss or damage by fire, and execute any works which may be required by any public or local authority; and from time to time to appoint any bailiff, stewards, or agents, to assist him in managing the same, with such salaries or allowances as he shall think reasonable; and from time to time to displace or remove the persons so appointed, or any person or persons now acting in any such capacity or capacities, and to appoint another or others.

To let or manage estates,

appoint bailiffs, &c.

(2) To accept surrenders of leases and tenancies.

(3) To execute and do all such assurances and things as he, my said attorney, shall think expedient for granting, demising, or letting all or any of the said freehold and leasehold messuages, farms, lands, and hereditaments, from year to year or for any term of years or other interest, in consideration of any fine or fines or without fine, and under and subject to such conditions, rents, covenants, and agreements, as my said attorney shall think fit; AND ALSO by virtue of any powers reserved to me in and by any leases under which the said premises may from time to time be held, or otherwise, to enter into and upon the said premises or any part thereof, to view and examine the state and condition thereof, and give the proper notices and directions respecting the repairs and cultivation of the same; or, if my said attorney shall deem expedient, by entry or otherwise wholly to determine and

To execute leases, &c.

To enter by virtue of powers in leases.

To determine leases.

VII. TO MANAGE, LEASE, CHARGE, AND SELL ESTATES, PAY DEBTS, AND RAISE MONEY, &C.

make void any such lease or leases by virtue of any power or powers therein contained, and generally to exercise all or any other powers, rights, and privileges, reserved to me in and by any such leases.

To receive and give receipts for rents.

(4) From time to time to demand, sue for, recover, and receive and give effectual receipts and discharges for all the rents and profits which now are or hereafter shall be due, owing, or arising for or in respect of my said freehold and leasehold estates in Great Britain (making such allowances and deductions thereout as may lawfully or reasonably be claimed); AND ALSO all other sums of money, securities for money, legacies, debts, goods, chattels, and personal effects and things whatsoever (*z*), to which I am now or hereafter shall be entitled.

And all other debts and effects.

In case of non-payment of rent to distrain.

To commence actions for rents or other moneys.

(5) To enter and distrain for all or any part of the said rents or arrears of rent, and to commence such actions or other proceeding or proceedings as my said attorney shall deem proper to compel the payment or delivery of all or any of the said rents, arrears of rent, issues and profits, sums of money, debts, legacies, goods, chattels, effects, and things, or any part or parts thereof respectively, or to enforce the performance of any covenant or covenants contained in any lease, granted or to be granted, of my said estates, or any part thereof, or to recover the possession of the said estates or any part thereof; and the same actions or proceedings respectively to prosecute or to discontinue, or to become nonsuited or otherwise to act therein as my said attorney shall deem expedient.

To settle accounts.

(6) To settle and adjust all accounts, reckonings, and demands whatsoever, between me and any person or persons whomsoever.

To prove debts in bankruptcy.

(7) And also, in case any person or persons who is, or are, or shall be indebted to me, shall become a bankrupt or bankrupts, to prove such debt or debts and receive the dividend or dividends payable in respect thereof.

To compound debts and refer to arbitration.

(8) To compound, compromise, and submit to arbitration and adjust all debts, claims, demands, and disputes subsisting or to arise between me and any other person or persons whomsoever;

(*z*) This power will not enable the attorney to receive dividends on stock in the public funds, for which a power must be obtained at the Bank of England.

VII. TO MANAGE, LEASE, CHARGE, AND SELL ESTATES, PAY DEBTS, AND RAISE MONEY, &c.

And for that purpose to execute and do all such instruments and things as the said [*attorney*] shall think expedient.

(9) To appear for me in any action or legal proceedings brought or prosecuted against me, or whereunto I shall be a party, and to defend the same, or therein to suffer judgment or decree to be taken or pronounced against me by default or otherwise, as my said attorney shall think proper or be advised. To appear to and defend actions.

(10) To enter into any agreement with any person or persons to whom I am or shall be indebted, touching the payment or liquidation of my debt or respective debts to him or them, or any part thereof respectively. To make arrangements with creditors.

(11) For me and on my behalf to borrow and take up at interest, upon the security of all or any part of my real or personal estate in Great Britain, any sum or sums of money my said attorney shall think proper. To borrow moneys.

(12) And also, if and when my said attorney shall think expedient, to sell, exchange and dispose of all or any of my freehold and leasehold estates, stocks, funds, shares and securities, goods, chattels, and effects in Great Britain (whether the same shall have been previously mortgaged or not), together or in parcels, and either by public auction or private contract, for such price or prices (including, in the case of a grant in fee, a perpetual rentcharge), as to my said attorney shall seem reasonable [with power to give credit for the whole or any part of the purchase-money thereof, and to permit the same to remain unpaid for such time and upon such security as my said attorney shall think proper]. And to mortgage or sell real and personal estate.

(13) And for all or any of the purposes herein mentioned, to execute and do all such mortgages, conveyances, surrenders, assurances, and things as shall be required, and as my said attorney shall think proper; and to receive and give effectual receipts for all or any the sum or sums of money which shall arise from any such sale or sales as aforesaid, or which shall be so borrowed as aforesaid, or which shall otherwise come into the hands of my said attorney by virtue of the powers hereinbefore contained. To execute mortgages and conveyances. To give receipts for purchase-moneys and moneys borrowed.

(13A) To transfer, release, or otherwise deal with any mortgages, charges, or securities to which I may be entitled, and to execute or enforce any powers of sale (*a*) or other rights, powers,

(*a*) *Re Dowson and Jenkin's Contract*, [1904] 2 Ch. 219.

VII. TO MANAGE, LEASE, CHARGE, AND SELL ESTATES, PAY DEBTS, AND RAISE MONEY, &c.

or remedies incident to such mortgages, charges, or securities, or otherwise to realise the same or obtain the benefit thereof as my attorney shall think proper.

Out of moneys received, in the first place to pay expenses:

(14) And by or out of such moneys as shall from time to time come to the hands of my said attorney, by virtue of any of the powers or authorities aforesaid, in the first place to pay and discharge all [the expenses of preparing, engrossing, and executing these presents, and all other] (*a*) costs, charges, damages, and expenses which my said attorney shall pay, or become liable to, in or about the execution of the powers vested in or given to him by these presents, or in anywise relating thereto. And, in the next place, to pay and discharge any debt or debts which is, or are, or shall be owing from me, or such of them or such part thereof as my said attorney shall think proper, or to apply the same, or such part thereof as he in his discretion shall think necessary, in keeping down the interest due or to grow due on any securities given or hereafter to be given by me or by my said attorney by virtue hereof; And to invest any moneys remaining in the hands of my attorney after such payments as aforesaid [see clause 9 of next Precedent], or to apply such moneys for such other purposes, and in such other manner, as I shall from time to time, by any writing under my hand, direct or appoint, or otherwise to dispose of the same for my use and benefit as he shall think fit.

And then to pay debts and keep down interest, &c.

Attorney to perform all other necessary acts respecting property and concerns of constituent.

(15) And generally to execute and do all instruments, acts, and things which my said attorney shall think necessary or proper to be executed or done in relation to the premises during my absence from England, as effectually as I might or could do if personally present.

Appointment of substitute.

2. In case of the death of the said [*attorney*], or of his inability (temporary or permanent) or unwillingness to act as my attorney in respect of the matters aforesaid, or any of them, then I appoint [*substitute*], of, &c., to act as my attorney in the place of the said [*attorney*] after his death, or at any time, or from time to time, during the subsistence of any such inability or unwillingness (as the case may be), unless and until these presents shall be revoked or determined in like manner as if the name of the said [*substitute*] had been inserted in these presents instead of the said [*attorney*].

(*a*) The words in brackets might be useful where the principal is unable for any reason to pay these expenses before leaving England.

3. And I hereby ratify and confirm, and agree to ratify and confirm, whatever the said [*attorney*], or the said [*substitute*], when acting as such substitute as aforesaid, shall do or cause to be done in or about the premises by virtue of these presents [and I declare that this power of attorney shall be irrevocable for one year] (*b*).

VII. TO MANAGE, LEASE, CHARGE, AND SELL ESTATES, PAY DEBTS, AND RAISE MONEY, &c.

Agreement to ratify.

IN WITNESS, &c.

VIII. POWER *of* ATTORNEY *by* PERSON *going* ABROAD. (SHORT FORM) (*c*).

KNOW ALL MEN BY THESE PRESENTS, that I [*principal*], of, &c., shortly going abroad, hereby appoint [*attorney*], of, &c., my attorney for me in my name and on my behalf,

Appointment of attorney.

1. To let and manage all freehold and leasehold property now or hereafter belonging to me or purchased by my attorney.

To let and manage freeholds, &c.

2. To receive and compel payment of the rents and profits of such freehold or leasehold property.

To receive rents, &c.

3. To demand, sue for, or prove in any bankruptcy, liquidation, composition, winding-up, or administration for any money, chattels, or other property now or hereafter belonging or coming to me: And to receive the same.

To receive debts, money and other property.

4. To draw cheques in my name on my current account with Messrs. ——.

To draw cheques.

5. To indorse or sign my name to any cheques, warrants, or other instruments payable to me.

To indorse cheques, &c.

6. To give, renew, or withdraw authorities or directions to bankers or others as to the manner in which any money payable to me shall be paid (*d*).

To alter and give directions as to payment of dividends, &c.

7. To enforce, resist, allow, remit, set off, settle, compound, compromise, or refer to arbitration any accounts, disputes, claims, actions, or proceedings in which I may be concerned or interested, and pay any money which my attorney may consider to be due from me.

To enforce or settle accounts, &c. and pay debts.

(*b*) See L. P. A. 1925, s. 127.
(*c*) Stamp, 10*s*.
(*d*) See p. 178, note (*z*).

VIII. BY PERSON GOING ABROAD.

8. To give receipts, releases, and indemnities for or in respect of any money or property paid or delivered or transferred to my attorney by virtue of these presents.

To give receipts, releases, &c.

8A. To sell, exchange, or dispose of all or any of my freehold and leasehold estates, together or in parcels, by public auction or private contract, and to sell or dispose of all or any of my stocks, funds, shares and securities, goods, chattels and effects as to my attorney shall seem reasonable.

To invest purchase and other moneys.

9. To invest any moneys received by my attorney by virtue of these presents in the purchase or on the security of freehold or leasehold property, or the stocks, shares, bonds, debentures, or debenture stock of any limited companies or public bodies, and from time to time to sell or vary such investments.

To employ agents.

10. To employ agents for any of the purposes aforesaid, and to pay to them such reasonable remuneration for their services as my attorney shall think proper.

Ratification.

And I hereby ratify and confirm, and agree to ratify and confirm, whatever my attorney shall do or cause to be done in or about the premises by virtue of these presents.

IN WITNESS, &c.

IX. POWER *of* ATTORNEY *empowering a* CREDITOR *to* RECEIVE *the* RENTS *of* FREEHOLD HOUSES, *by way of* SECURITY *for a* LOAN.

Parties.

THIS DEED (*e*), made the —— day of ——, 19—, BETWEEN [*debtor*], of, &c. (hereinafter called "the borrower"), of the one part, and [*creditor*], of, &c. (hereinafter called "the lender"), of the other part:

Recitals: of principal's title.

WHEREAS the [*debtor*] is seised of, or otherwise well entitled to two several messuages, situate in —— Street, in the parish of ——, in the county of ——, being Nos. —— and —— in the said street, for an estate in fee simple in possession free from incumbrances, which said several messuages have been let by the [*debtor*] to the several persons, and at the several yearly rents following, that is to say, No. ——, in —— Street aforesaid, to [A. B.], as tenant from year to year, at the yearly rent of

(*e*) Stamp, *ad valorem*, as a mortgage in respect of the amount of the advance.

IX. TO RECEIVE LEASEHOLD RENTS.

£——; and No. ——, in —— Street aforesaid, to [C. D.], by a lease, dated the —— day of ——, 19—, for twenty-one years from the —— day of ——, 19—, at the yearly rent of £——; AND WHEREAS the [*lender*] has agreed to lend to the [*borrower*] the sum of £——, at interest, on the security of the rents of the said two several messuages, to be received by him the [*lender*] as hereinafter expressed: NOW THIS DEED WITNESSES as follows:— *Testatum.*

1. In pursuance of the said recited agreement, and in consideration of the sum of £—— paid by the [*lender*] to the [*borrower*] (the receipt whereof the [*borrower*] doth hereby acknowledge), the [*borrower*] hereby irrevocably (*f*) appoints the [*lender*], or his personal representatives (*g*), the attorney and attorneys of him the [*borrower*], for him and in his name or otherwise to receive and recover from the tenants and occupiers of the said two messuages respectively, ALL THOSE several yearly rents of £—— and £——, so respectively reserved and made payable to the [*borrower*] out of, or in respect of, the same messuages; AND alll moneys now due, or hereafter to become due, in respect of the same rents or either of them, and to give effectual discharges for the same, exonerating the persons paying such rents respectively from all responsibility in respect of the application thereof; AND, for the purposes aforesaid, to levy and make such distresses and entries upon the said premises, and to do and execute all such other acts, matters and things as may be expedient for compelling and enforcing payment of the said rents, and to appoint, from time to time, a substitute or substitutes for all or any of the purposes aforesaid, and from time to time every such substitution at pleasure to revoke; the [*borrower*] hereby agreeing to ratify and confirm whatsoever the attorney or attorneys, or his or their substitute or substitutes, shall lawfully do, or cause to be done, in or about the premises.

Appointment of attorney.

To receive the rents.

To give receipts.

To distrain.

To substitute.

Agreement to ratify.

2. The [*borrower*] hereby covenants with the [*lender*] to pay unto the [*lender*], or his personal representatives, on the —— day of —— next, the sum of £——, with interest for the same in the meantime at the rate of —— per cent. per annum: AND also, that

Covenants by principal to repay mortgage moneys.

(*f*) See L. P. A. 1925, s. 126.

(*g*) As to the effect of a power given to the donee, "his executors or administrators," see Key & Elph. 11th ed. vol. i. p. 213.

IX. TO RECEIVE LEASEHOLD RENTS.

he the [*borrower*], or his personal representatives, so long as any principal moneys shall remain owing, by virtue of this deed, will pay to the [*lender*], or his personal representatives, interest for the same at the rate aforesaid, by equal half-yearly payments on the —— day of —— and the —— day of ——in every year; AND that the [*borrower*], or his personal representatives, will not prevent or hinder the [*lender*], or his personal representatives, from receiving the rents and moneys so to be received by him or them as aforesaid, but will, on the request of the [*lender*], or his personal representatives, and at the cost of him the [*borrower*], or his personal representatives, make, do and execute all such further acts, deeds and authorities as shall be requisite for authorising and empowering the [*lender*], or his personal representatives, to receive the said rents and moneys, so long as any part of the principal sum intended to be hereby secured, or of the interest thereon, shall remain owing to him or them, as by the [*lender*], or his personal representatives, shall be reasonably required.

And not hinder attorney from receiving rents.

For further assurance.

Declaration of trusts of moneys.

3. IT IS HEREBY DECLARED AND AGREED, that the [*lender*], or his personal representatives, shall stand possessed of the said rents and moneys so to be received by him and them as aforesaid, UPON TRUST thereout, in the first place, to pay the rates and other outgoings which shall, from time to time, be payable in respect of the said premises; AND, in the next place, UPON TRUST, from time to time to retain to and reimburse himself and themselves the said sum of £—— advanced by the [*lender*] to the [*borrower*] as aforesaid, or so much thereof as shall for the time being remain unpaid, with interest thereon at the rate of —— per cent. per annum from the date hereof to the time or respective times of the repayment of the same; AND after full payment and satisfaction of the said principal and interest moneys, and of all costs and expenses attending the execution of this present trust, UPON TRUST, to pay over unto the [*borrower*], or his personal representatives, any moneys which shall remain in the hands of the [*lender*], or his personal representatives, unapplied to the purposes aforesaid.

To pay rates and outgoings.

To retain mortgage-moneys and trust expenses.

To pay over balance.

Delivery up of the power of attorney in satisfaction of the debt, &c.

4. IT IS HEREBY AGREED AND DECLARED, that when the said principal and interest, moneys, costs, charges and expenses shall have been fully satisfied, the [*lender*], or his personal representatives, on the request of the [*borrower*], or his personal representa-

tives, shall deliver to him or them this present power of attorney to be cancelled.

IX. TO RECEIVE LEASEHOLD RENTS.

IN WITNESS, &c.

X. APPOINTMENT *by* ATTORNEY *of* TWO PERSONS *as* SUBSTITUTES, *by* VIRTUE *of an* AUTHORITY *in the* POWER *of* ATTORNEY.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*h*), [*appointor*], of, &c. (hereinafter called "the appointor"), sends greeting: WHEREAS [*principal*], of, &c., duly made and executed under his hand and seal a certain deed poll or power of attorney, dated the —— day of ——, whereby the said [*principal*] appointed the appointor his attorney, for him and in his name [*recite power, including the authority to appoint a substitute*]: NOW THESE PRESENTS WITNESS, that the appointor, by virtue and in execution of the authority in that behalf contained in the said power of attorney, and of all other authorities him thereunto enabling, doth hereby appoint [*two attornies*], of, &c., and each of them, to be the attornies and attorney, jointly and separately, of the said [*principal*], for him and in his name, or in the name of the appointor, to execute and perform all and every the authorities, matters, and things mentioned and contained in the said deed poll or power of attorney, in the same manner, and as fully and effectually, as he the said [*principal*], or as the appointor might or could have done if personally present, and as they the said [*attornies*], or either of them, might or could have done if they had been appointed the attornies jointly and severally of the said [*principal*], in and by the said deed poll or power of attorney, in the stead of the appointor, the appointor hereby confirming and agreeing to confirm whatsoever the said [*attornies*] jointly, or either of them separately, shall do or cause to be done in and about the premises by virtue of these presents or of the said deed poll.

Recital of power of attorney, with power to appoint substitutes.

Testatum.

Appointment of substitutes.

Agreement to ratify.

IN WITNESS, &c.

(*h*) Stamp, 10*s*.

XI. REVOCATION OF POWER OF ATTORNEY.

XI. DEED *of* REVOCATION *of a* POWER *of* ATTORNEY (*i*).

Recital of powers.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*k*), I [A. B.], of, &c., send greeting: WHEREAS, by a certain deed poll or power of attorney under my hand and seal, dated the —— day of ——, I appointed [C. D.], of, &c., my attorney, for me and in my name [*recite power*]: NOW KNOW YE, that I, the said [*principal*], do by these presents absolutely revoke the said deed poll or power of attorney, and every power and authority expressed to be thereby given: PROVIDED NEVERTHELESS, that nothing herein contained shall impeach or invalidate any act which the said [*attorney*], or any substitute or substitutes acting under him, shall lawfully do or cause to be done by virtue of any power or authority expressed to be given by the said power of attorney, before the revocation thereof by these presents shall have been made known to the said [*attorney*], or to his substitute or substitutes.

Testatum.

Revocation of power.

IN WITNESS, &c.

XII. DECLARATION *to* ACCOMPANY *a* POWER *of* ATTORNEY *to* RECOVER *a* DEBT *in a* BRITISH COLONY *or* DEPENDENCY (*l*).

Declaration to accompany power.

I [A. B.], of Cheapside, in the City of London, clerk to [*creditor*], of the same place, linen merchant, do solemnly and sincerely declare that the several goods and articles mentioned in the bill or account hereunto annexed, signed by the [*creditor*], were to my knowledge supplied and furnished by the said creditor to [*debtor*], now of Kingston, in the Island of Jamaica, but late of the City of London [*description*], by the order and at the request of the said

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(*i*) Where the letter of attorney is under seal, the revoking instrument should also be under seal. But this is not absolutely necessary. If an interval must necessarily elapse before the revocation is communicated to the attorney (which will happen if he reside at a distance), it may be well, though perhaps not strictly necessary, to add a qualification to the effect in the text.

(*k*) Stamp, 10*s*.

(*l*) See the Statutory Declarations Act, 1835 (5 & 6 Will. 4, c. 62), and the Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 21. Stamp, 2*s*. 6*d*.: see Stamp Act, 1891, sched. *tit.* "Affidavit and Statutory Declaration."

[*debtor*] (*m*), and also that I verily believe that the sum of £——, the amount of the said bill or account, is now justly due and owing from the said [*debtor*] to the said [*creditor*]: And I further solemnly and sincerely declare that on the —— day of ——, I the said [*declarant*] and [*the other attesting witness*], of, &c., were present together and did see the said [*creditor*] duly sign, seal, and, as his act and deed, deliver the power of attorney dated the —— day of —— hereunto annexed, and that the name [*creditor's signature*] appearing to be thereunto subscribed, is of the proper handwriting of the said [*creditor*], and that the names [A. B.] and [C. D.], thereunto also subscribed as witnesses attesting the execution thereof, are of the respective proper handwritings of me the said [*declarant*] and the said [*other witness* (*n*)]. And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

XII. DECLARATION AS TO DEBT, TO ACCOMPANY POWER OF ATTORNEY.

Declared at the Guildhall, London, the —— day of ——, 19—, before me,

X. Y. [*Mayor*].

XIII. DECLARATION *of* Attesting Witness *to a* Power *of* Attorney (*o*).

I, [A. B.], of, &c., do solemnly and sincerely declare, that on the —— day of ——, 19—, I and [*other witness*], of, &c., were present together and did see [*principal*], of, &c., sign, seal, and, as his act and deed, deliver, the power of attorney hereunto annexed, and that the name [*principal's signature*] appearing to be subscribed

Declaration.

(*m*) If the witness cannot speak to the fact of the goods having been supplied, instead of the above statement, say,

"That the bill or account hereto annexed, signed by the said [*creditor*] is a just and true transcript or copy of a bill or account as appearing in the books of the said [*creditor*]."

(*n*) In order to avoid the necessity of having more than one declaration, the person speaking to the fact that the debt is due should be one of the attesting witnesses to the power of attorney, and should make the declaration of its execution.

(*o*) Stamp, 2*s*. 6*d*.

XIII. DECLARATION OF WITNESS.

thereto, as the name of the party executing the same, is of the handwriting of the said [*principal*], and that the names [A. B.] and [C. D.] respectively appearing to be subscribed thereto, as the names of the attesting witnesses to the execution of the said power of attorney, are of the respective handwritings of me, the said [*declarant*], and the said [*other witness*]. AND I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared at ——, in the city of ——, [*or*, borough of ——, in the county of ——], this —— day of ——, 19—, before me [X. Y.], Mayor [*or*, Notary Public].

XIV. CERTIFICATE *of* MAYOR *or* NOTARY VERIFYING *preceding* DECLARATION (*p*).

Certificate.

TO ALL TO WHOM THESE PRESENTS SHALL COME (*q*), I, [*mayor*], Mayor of the city of ——, [*or*, borough of ——], in the county of ——, [*or*, Notary Public, duly admitted and sworn of ——, in the county of ——], in pursuance of the Statutory Declarations Act, 1835 (*r*), do hereby certify, that, on the day of the date hereof, personally came and appeared before me [A. B.], of, &c., the person named in the declaration hereunto annexed, being a person well known and of good credit, and by declaration, which the said [A. B.] then made before me, did solemnly and sincerely declare and testify to be true the several matters and things mentioned and contained in the said annexed declaration.

(*p*) The trouble and expense of a declaration and mayor's certificate may be saved by executing the power of attorney in the presence of a person who is about to proceed to the island in which the instrument is to be used, and who can make the necessary deposition there; but where the declaration embraces other objects, which make the certificate, &c. necessary at all events, nothing is gained by this expedient.

(*q*) By the Stamp Act a notarial act (with certain exceptions) is charged with a duty of 1*s.*: see Stamp Act, 1891, sched. *tit.* "Notarial Act."

(*r*) See the Statutory Declarations Act, 1835, ss. 15, 16.

In faith and testimony whereof, I, the said Mayor [Notary Public] have caused the seal of the office of Mayoralty of the said city [*or*, borough] of —— [*or*, my notarial seal of office], to be hereunto put and affixed, and the power of attorney mentioned in the said declaration to be hereunto annexed. Dated at the city [*or*, borough] of —— aforesaid, the —— day of ——, 19—. XIV. CERTIFICATE OF MAYOR OR NOTARY.

[*Mayoralty or Notarial Seal.*]

X. Y., *Mayor of* ——.
[*or*, Notary Public].

BONDS.

PRELIMINARY NOTE.

It was never necessary that executors or administrators should be expressly named in a bond or obligation under seal; but prior to the Conveyancing Act, 1881, it was necessary that the heirs should be so named, otherwise they were not chargeable. By virtue of sect. 80 (1) of the Law of Property Act, 1925 (replacing sect. 59 of the Conveyancing Act, 1881), all bonds and obligations or contracts under seal, made after the 31st December, 1881, bind the real and personal estate of the person making the same unless a contrary intention is therein expressed.

Under sect. 81 of the Law of Property Act, 1925 (formerly sect. 60 of the Conveyancing Act, 1881), a covenant or bond or obligation under seal, made with two or more jointly to pay money, &c., enures for the benefit of the survivor or survivors of them, and if made after the commencement of the Act (*i.e.*, the Law of Property Act, 1925) shall be construed as being also made with each of them. By sect. 111 (1) of the Law of Property Act, 1925 (replacing sect. 61), the receipt of the survivors or last survivor is a complete discharge. In the case, therefore, of a bond or obligation with two or more obligees, the words of survivorship can be omitted. As to payment to one of joint obligees, see *Steeds* v. *Steeds*, 22 Q. B. D. 537; *Powell* v. *Brod-*

hurst, [1901] 2 Ch. 160. Nothing can be recovered on the bond beyond the penalty. (*Harris* v. *Harris*, [1892] A. C. 547.)

Though the statutory next of kin (Administration of Estates Act, 1925, sect. 50 (1)) or devisee are bound by the bond or obligation under seal, proceedings against them cannot be effectually taken if the covenantor died after 1925, until the property has been conveyed to the statutory next of kin, or the devise has been assented to by the personal representative under the Administration of Estates Act, 1925, s. 36.

As to bonds generally, see 2 Byth. & Jarman, 4th ed., p. 267.

The following are the provisions as to stamp duties on bonds contained in the schedule to the Stamp Act, 1891:—

	Duty. £ s. d.
BOND for securing the payment or repayment of money, or the transfer or retransfer of stock. See "*Mortgage*," &c., and "*Marketable Security*."	
BOND in relation to any annuity upon the original creation and sale thereof. See "*Conveyance on Sale*," and sect. 60.	
BOND, COVENANT, or INSTRUMENT of any kind whatsoever.	
(1.) Being the only or principal or primary security for any annuity (*except upon the original creation thereof by way of sale or security, and except a superannuation annuity*), or for any sum or sums of money at stated periods, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease or tack.	
For a definite and certain period, so that the total amount to be ultimately payable can be ascertained.	The same ad valorem duty as a bond or covenant for such total amount.
For the term of life or any other indefinite period.	
For every 5*l.*, and also for any fractional part of 5*l.*, of the annuity or sum periodically payable . .	£ s. d. 0 2 6

Duty.

(2.) Being a collateral or auxiliary or additional or substituted security for any of the above mentioned purposes where the principal or primary instrument is duly stamped.

Where the total amount to be ultimately payable can be ascertained. — The same ad valorem duty as a bond or covenant of the same kind for such total amount.

In any other case:

£ s. d.

For every 5*l.*, and also for any fractional part of 5*l.*, of the annuity or sum periodically payable 0 0 6

(3.) Being a grant or contract for payment of a superannuation annuity, that is to say a deferred life annuity granted or secured to any person in consideration of annual premiums payable until he attains a specified age and so as to commence on his attaining that age.

For every 5*l.*, and also for any fractional part of 5*l.*, of the annuity . 0 0 6

Bond given pursuant to the directions of any Act, or of the Commissioners or the Commissioners of Customs, or any of their officers, for or in respect of any of the duties of excise or customs, or for preventing frauds or evasions thereof, or for any other matter or thing relating thereto.

Where the penalty of the bond does not exceed 150*l.* — The same ad valorem duty as a bond for the amount of the penalty.

£ s. d.

In any other case 0 5 0

Exemption.

Bond given as aforesaid upon, or in relation to, the receiving or obtaining, or for entitling any person to receive or obtain, any drawback of any duty of excise or customs, for or

Duty.
£ s. d.

in respect of any goods, wares, or merchandise exported or shipped to be exported from the United Kingdom to any parts beyond the seas, or upon or in relation to the obtaining of any debenture or certificate for entitling any person to receive any such drawback as aforesaid.

And see sect. 42.

See extension of this exemption, Finance Act, 1905 (5 Edw. 7, c. 4).

BOND on obtaining letters of administration in England or Ireland, or a confirmation of testament in Scotland 0 5 0

Exemptions.

(1.) Bond given by the widow, child, father, mother, brother, or sister, of any common seaman, marine, or soldier, dying in the service of Her Majesty.

(2.) Bond given by any person where the estate to be administered does not exceed 100*l.* in value.

BOND of any kind whatsoever not specifically charged with any duty:

Where the amount limited to be recoverable does not exceed 300*l.* . . . . . The same ad valorem duty as a bond for the amount limited.

£ s. d.

In any other case 0 10 0

BOND, accompanied with a deposit of title deeds, for making a mortgage, wadset, or other security on any estate or property therein comprised.

See "*Mortgage*," &c., and sect. 86.

BOND, DECLARATION, or other DEED or WRITING for making redeemable any disposition, assignation, or tack, apparently absolute, but intended only as a security.

See "*Mortgage*," &c., and sects. 23 and 86.

PRECEDENTS.

I. BOND *for* PAYMENT *of* MONEY *and* INTEREST, *either in one* SUM *or by* INSTALMENTS, *and either with* ONE, TWO, THREE, *or* MORE OBLIGORS, *or* ONE, TWO, THREE, *or* MORE OBLIGEES (*a*).

Common obligation from one to one.

KNOW ALL MEN BY THESE PRESENTS, that I (*b*), [*obligor*], of, &c., am bound to (*c*) [*obligee*], of, &c., in the sum of [*generally double the amount of the principal sum to be secured*]; For payment whereof I (*d*) bind myself by these presents. Sealed with my seal. Dated this —— day of ——, 19—.

Condition of a bond from one to one, for

THE CONDITION of the above-written bond or obligation is such, that if the above-bounden (*e*) [*obligor*], or his personal

---

Stamp.

(*a*) Where the bond is given by way of security for a fixed sum the stamp will be an *ad valorem* stamp, as for a mortgage on the principal sum secured: see Stamp Act, 1891, s. 86, and 1st Sched. *tit.* "Mortgage, Bond, &c." If given to secure future advances of an indefinite amount, see *post*, p. 197, note (*q*). As to stamps on "annuity" bonds and "faithful service" bonds, and other special forms, see under the Precedents of such bonds.

Two or more obligors.

(*b*) If there be two or more obligors,

"We [*names, addresses, and descriptions of obligors*] are bound," &c.

Two or more obligees.

(*c*) If there be two or more obligees insert names, addresses, and descriptions of obligees.

Two obligors.

(*d*) If there be two or more obligors, say,

"We jointly and severally bind ourselves," &c.

Formerly the form of an obligation for several obligors was, "We bind ourselves and each of us, and any four, three, or two of us jointly and severally," &c.; but by reason of the provisions of Order XVI. of the Rules of the Supreme Court, 1883, rr. 4, 6, the words given above are all that are now required.

(*e*) If there be two obligors, say,

"the said [*obligors*], or either of them, or the personal representatives of them or of either of them," &c., *supra*.

If there be three or more, say,

"the above-bounden [*obligors*], or any of them, or the personal representatives of them or of any of them," &c.

I. PAYMENT OF MONEY AND INTEREST.

payment of money and interest (*f*).

representatives (*g*), should pay or cause to be paid unto the said [*obligee*] (*h*), or his personal representatives, the sum of £——, with interest for the same after the rate of five pounds for one hundred pounds for a year (*i*), upon the —— day of [*generally six months from the date*] now next ensuing, without any deduction, then the above-written bond shall be void, or otherwise shall be and remain in full force.

Signed, sealed, and delivered
in the presence of

(*f*) If there be a surety or sureties, it seems prudent to say,
"WHEREAS the above-bounden [*surety*] has [*or*, (*sureties*) have] agreed to join with the said [*principal*] in the above-written bond, subject to the condition hereunder written, as a surety [*or*, sureties] for the said [*principal*], or his personal representatives, NOW THEREFORE THE CONDITION," &c.

(*g*) It is advisable to mention expressly the personal representatives of the obligor and of the obligee in the *condition*, in order that the events in which the bond is to be avoided may be set forth with strict accuracy.

To two or more.

(*h*) If there be two or more obligees, say,
[*obligees*], or their personal representatives, the sum," &c.

By instalments.

(*i*) If to be paid by instalments, say,
"in the manner following: that is to say, the sum of £—— on the —— day of —— now next ensuing; the sum of £—— on the —— day of —— then next following; and the sum of £—— on the —— day of ——, in the year 19—; together with interest, after the rate aforesaid, on each of the said days of payment, for the said principal sum of £——, or so much thereof as at or immediately before the payment of such instalments shall be due and owing, without," &c.

II. BOND *from* ONE *to* TWO, *for* PAYMENT, *by* INSTALMENTS, *of a* SUM *of* MONEY; *which the* OBLIGEES *have agreed to* TAKE *in full* DISCHARGE *of a* DEBT *of* LARGER AMOUNT, *if the* INSTALMENTS, *with* INTEREST, *should be regularly* PAID: *and* AGREEMENT *that if the* INSTALMENTS *are not duly* PAID, *such* PAYMENTS *as shall be made shall only be a* PARTIAL DISCHARGE *of the original* DEBT (*k*). II. PAYMENT BY FOUR INSTALMENTS.

KNOW ALL MEN BY THESE PRESENTS, that I [*obligor*], of, &c., am bound to [*obligees, names and addresses*], in the sum of 2,360*l.*, for payment whereof I bind myself by these presents. Sealed with my seal. Dated this —— day of ——, 19—. Obligation.

WHEREAS the above-bounden [*obligor*] is indebted to the above-named [*obligees*] in the sum of 3,030*l.*: AND WHEREAS the above-bounden [*obligor*] is unable to fully satisfy and pay to the said [*obligees*] the said debt, and the said [*obligees*] have agreed to accept from the above-bounden [*obligor*] the sum of 1,180*l.*, payable by instalments, with interest thereon at the rate of —— per cent. per annum, as hereinafter is mentioned, in full satisfaction and discharge of the said debt or sum of 3,030*l.*, provided the said sum of 1,180*l.*, with interest as aforesaid, be regularly paid as is hereinafter mentioned. NOW THE CONDITION of the above-written bond is such, that in case the above-bounden [*obligor*], or his personal representatives, or any of them, shall pay to the above-named [*obligees*] (*l*), or their personal representatives, the sum of 1,180*l.* by four equal instalments of 295*l.* each, the first of such instalments to be paid on the —— day of —— next, the second on the —— day of ——, the third on the —— day of ——, and the fourth on the —— day of ——; and shall also in the meantime, and till the whole of the said sum of 1,180*l.* shall be paid as aforesaid, pay to the said [*obligees*], or their personal representatives, interest for the said sum of 1,180*l.*, or for so much thereof as shall for the time being remain unpaid, at the rate of —— per cent. per annum, to be computed from the date of the above- Recital of debt. Inability to pay. Agreement to accept part payment by instalments, if regularly paid. Condition for payment of sum by instalments.

(*k*) Stamp, *ad valorem* as on a mortgage for 1,180*l.*

(*l*) It is not now necessary to say "and the survivors or survivor of them," &c. See Preliminary Note, *ante*, p. 189. Survivorship.

II. PAYMENT BY FOUR INSTALMENTS.

written bond by equal half-yearly payments, on the —— day of —— and the —— day of —— in each year, the first of such payments to be made on the —— day of —— next; then, and in such case, the above-written bond shall be void; otherwise the same shall remain in force; but so, nevertheless, that in case of failure in making the several payments aforesaid, or any of them, within —— days after the respective days hereinbefore appointed for payment thereof respectively, then this bond, or any payment or payments to be made under the same, shall not be construed or taken as a satisfaction or discharge of the said debt or sum of 3,030*l.*, or of any further or other part thereof, than shall have been actually paid under this bond (*m*); but, in such case the whole of the said sum of 3,030*l.*, or so much thereof as shall not have been actually paid as aforesaid, shall forthwith become payable to the said [*obligees*], and be recoverable accordingly (*n*).

Agreement that, if instalments are not duly paid, payments made shall only be partial discharge.

Signed, sealed, and delivered
in the presence of

III. POST OBIT BOND *with a* SURETY *for securing a* SUM *if the* VENDOR *should* SURVIVE *his* FATHER (*o*).

Obligation.

KNOW ALL MEN BY THESE PRESENTS, that we [*names and addresses of principal and surety*], are bound to [*obligee*], of, &c., in the sum of £——, for payment whereof we jointly and severally bind ourselves by these presents. Sealed, &c. Dated, &c.

Recital of contract for purchase of 2,500*l.*

WHEREAS the above-named [*obligee*] has contracted with the above-bounden [*principal*] for the purchase of the sum of 2,500*l.* to be paid to the said [*obligee*], or his personal representatives, in the event of his, the said [*principal*], surviving his father [*father*], of, &c., but not otherwise, at or for the price of 1,000*l.*:

Payment of purchase-money.

AND WHEREAS, in pursuance of the said contract, the said [*obligee*] has paid the sum of 1,000*l.* unto the said [*principal*],

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An agreement in a bond respecting incidental matter does not require an agreement stamp.

(*m*) As the obligees by the recital agree to take the sum secured by the bond as a discharge for the debt, they should sign the bond. Notwithstanding the stipulation at the end of the bond, an additional stamp does not appear to be necessary, because it is a modification of the terms on which the bond is given.

(*n*) This stipulation is valid: see *Ex p. Burden*, 16 Ch. D. 675.

(*o*) Stamp: see *ante*, p. 193, note (*a*).

the receipt whereof the said [*principal*] hereby acknowledges: AND WHEREAS upon the treaty for the purchase of the said contingent sum of 2,500*l.*, it was agreed that the payment thereof, in the event aforesaid, should be secured by the joint and several bond of the said [*principal*] and [*surety*] as the surety for the said [*principal*]. NOW THEREFORE THE CONDITION of the above-written obligation is such, that if the said [*principal*] shall survive the said [*father*]; and in such case, if the said [*principal*] and [*surety*], or either of them, or the personal representatives of them, or of either of them, should pay or cause to be paid to the said [*obligee*], or his personal representatives, within six calendar months next after the decease of the said [*father*], in the lifetime of the said [*principal*], the sum of 2,500*l.* sterling; or in case the said [*principal*] shall die in the lifetime of the said [*father*], then the above-written bond shall be void, or otherwise shall be and remain in full force.

III. CONTINGENT POST OBIT, WITH SURETY.

Agreement that contingent sum should be secured by bond.

Condition.

Signed, sealed, and delivered
in the presence of

IV. BOND *from a* PRINCIPAL *and* TWO SURETIES *to* BANKERS, *to secure to a* BANKING FIRM *such* BALANCE *as may become* DUE *on* ACCOUNT *current* (*p*). PROVISO *limiting the* AMOUNT *to be* RECOVERED *under the* BOND (*q*).

[BOND, *joint and several*, ante, *p.* 193, *note* (*b*).]

Obligation.

WHEREAS the above-named [*obligees*] carry on the business of bankers in copartnership under the firm or style of ——: AND

Recital of carrying on business:

(*p*) See *Australian Joint Stock Bank* v. *Bailey*, [1899] A. C. 396.

(*q*) Sect. 88, sub-sect. (2) of the Stamp Act, 1891, enacts, with regard to securities for future advances, where the total amount secured or to be ultimately recoverable is unlimited, as follows:—"Where such total amount is unlimited, the security is to be available for such an amount only as the *ad valorem* duty impressed thereon extends to cover, but where any advance or loan is made in excess of the amount covered by that duty the security shall for the purpose of stamp duty be deemed to be a new and separate instrument, bearing date on the day on which the advance or loan is made." This bond should therefore be stamped with an *ad valorem* stamp as on a mortgage for an amount which it is estimated will cover any overdraft on the current account.

Stamp. Future advances.

IV. TO BANKERS, FOR LIMITED CURRENT BALANCE.

WHEREAS the above bounden [*principal*] now carries on the business of [——]: AND WHEREAS the said [*principal*] has requested the said [*obligees*] to accept and discount notes, drafts, and bills of exchange, for him the said [*principal*]; and also to advance and lend him such sum and sums of money as he may require for his convenience and accommodation, in order to enable him to carry on the said business; and also to keep a cash or running account with him, the said [*principal*]; which they, the said [*obligees*], have agreed to do, upon having the balance of the said cash or running account secured by the joint and several bond of the said [*principal*], and of the said [*sureties*], in the penal sum of £——, with such condition as is hereinafter contained. NOW THEREFORE THE CONDITION of the above written bond is such, that if the above bounden [*principal*] and [*sureties*], or any of them, or the personal representatives of them, or of any or one of them, shall, from time to time, pay or cause to be paid unto the said [*obligees*], or any of them, or other the persons or person for the time being carrying on the said business of bankers now carried on under the firm of ——, or to the personal representatives of them, or any of them respectively (hereinafter referred to as "the said bankers or their representatives"), ALL such sum and sums of money as shall or may at any time be due to the said bankers or their representatives, for or on account of any drafts, notes, or bills of exchange, drawn or discounted upon, with, or by the said bankers or their representatives, by or for or on account of, or any advances or payments made by the said bankers or their representatives, to, or for the use or convenience of, or on account of, the said [*principal*], either alone or jointly with any other person or persons with whom he may enter into partnership, or the personal representatives of him, or them, or any of them, or for, or on account of, interest, commission, or other lawful charges incidental to the said transactions, or any of them, together with all costs and expenses which may be incurred by the said bankers or their representatives in relation to the premises, then the above written bond or obligation shall be void and of no effect, otherwise the same shall be and remain in full force and virtue: PROVIDED ALWAYS, and it is hereby agreed and declared, that the sum of money to be ultimately recovered on this bond against either of them, the said [*sureties*], or their or his personal

that principal hath requested bankers to open an account with him;

which they have agreed to do, on having running balance secured by the bond of principal and sureties;

Condition for payment of all such sums as shall be due to the firm for the time being,

on account of principal; or on his and his partner's account:

Proviso limiting the amount of the money to be

representatives, shall be, and is hereby limited not to exceed the sum of £——: PROVIDED ALSO that, although as between the said [*principal*] and the said [*sureties*], the said [*sureties*] are only sureties for the said [*principal*], nevertheless, as between the said [*sureties*] and the said bankers and their representatives respectively, the said [*sureties*] shall be taken to be principal debtors for the moneys intended to be hereby secured, so that they shall not, nor shall either of them, nor the personal representatives of them, or either of them, be released from their, or his, liability, under the above written bond, by reason of time being given to the said [*principal*], or his personal representatives, or by the release of any collateral securities for the moneys intended to be hereby secured, or by any other forbearance, act, or omission of the said bankers or their representatives, or by any other matter or thing whereby the said [*sureties*], or either of them, or the personal representatives of them, or either of them, would be so released but for this provision.

IV. TO BANKERS, FOR LIMITED CURRENT BALANCE.

recovered under the bond.

Sureties to be liable as principals.

Signed, sealed, and delivered
in the presence of

V. BOND, *with* SURETIES, *for the* FAITHFUL SERVICE *of a* CLERK *to* PARTNERS, *notwithstanding any* ALTERATION *in the* FIRM (*r*).

KNOW ALL MEN BY THESE PRESENTS, that we [*clerk*], of, &c., [*surety*], of, &c., and [*surety*], of, &c., are bound to [*partners*], carrying on business together in copartnership as ——, in the sum of 2,000*l*. For payment whereof we jointly and severally bind ourselves by these presents, sealed with our seals. Dated this —— day of ——.

Obligation.

WHEREAS the above-named [*partners*] have lately admitted the above bound [*clerk*] into their service, as their clerk, and have agreed to retain and continue him in their said service, on his obtaining two respectable persons to become sureties for his faithful and honest conduct during his service: And the said [*sureties*]

Recital of having taken clerk.

(*r*) Stamp, 10*s*.; the amount recoverable being over 300*l*.: see Preliminary Note, *ante*, pp. 189, 190.

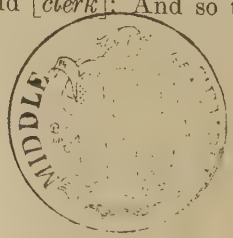
V. FAITHFUL SERVICE OF CLERK.

have, at the request of the said [*clerk*], agreed to become such sureties, and have for that purpose executed the above written bond. NOW THE CONDITION of the above written bond is such, that, if the said [*clerk*] shall from time to time, and at all times hereafter, so long as he shall be in the service of the said [*partners*], or either of them, alone or jointly with any other person or persons who may from time to time carry on the said business of —— in partnership with them, or either of them, or in the service of any other person or persons who may hereafter carry on the said business after the death or retirement of the said [*partners*] (hereinafter referred to as "the partners or partner for the time being"), faithfully and diligently perform the said service and all duties incidental thereto, and well and satisfactorily account for, and pay over and deliver to the partners or partner for the time being, or the personal representatives of them, or of any of them, all and every sums and sum of money, and securities for money, goods, and effects whatsoever, which he the said [*clerk*] shall receive for the use of them, or any of them, or which shall at any time or times be intrusted to his care by them the partners or partner for the time being, or any of them, or by the correspondents or customers of them, or of any of them, or others to whom they, or any of them, are, or is, or shall or may be liable or accountable: And shall not at any time embezzle, make away with, obliterate, deface, or in anywise injure any of the money, securities for money, books, papers, writings, goods, or effects of them the partners or partner for the time being, or any of them, or of the correspondents or customers of them, or of any of them, or others to whom they or any of them are, or is, or shall or may be or become liable or accountable; or in case the said [*sureties*], or either of them, their, or either of their personal representatives, shall, when required, make good to the partners or partner for the time being, or any of them, or their or his personal representatives, all moneys, books, papers, writings, goods, or effects which may be embezzled, made away with, obliterated, defaced, or injured, or unlawfully disposed of by the said [*clerk*] whilst in such service as aforesaid; And shall keep the partners or partner for the time being, and each of them, their, and each of their personal representatives, indemnified against all losses, damages, or expenses by reason of any such act or default of the said [*clerk*]: And so that any forgiveness or for-

Agreement to become sureties.

Condition for faithful service of clerk:

and that he shall not embezzle, &c.



bearance on the part of the said partners or partner for the time being, or any of them, or the personal representatives of them, or any of them, shall not release the said [*sureties*], or either of them, or their respective personal representatives, in respect of their or his liability under the above written bond: Then, and in such case, the above written bond to be void, and of no effect; otherwise to remain in full force. PROVIDED ALWAYS, and it is hereby declared, that the said [*sureties*], or their respective personal representatives, are not separately, or individually, to be liable for more than 1,000*l.* each, parcel of the said sum of 2,000*l.* mentioned in the said above written bond or obligation.

V. FAITHFUL SERVICE OF CLERK.

Proviso that sureties shall only be liable to a given amount.

Signed, sealed, and delivered
in the presence of

VI. BOND *for the* PERFORMANCE *of an* AGREEMENT.

Obligation.

[BOND, *ante*, p. 193] (*s*).

THE CONDITION of the above written bond is such, that, if the above bounden [*obligor*], or his personal representatives, should, in all things, on his and their parts, observe, perform, fulfil, and keep all and singular the clauses, conditions, agreements, matters, and things, which on the part of the said [*obligor*], or his personal representatives, are to be observed, performed, fulfilled, and kept, according to an agreement in writing, bearing even date herewith [*or* dated the —— day of ——, 19—], and expressed to be made between the said [*obligor*], of the one part, and the said [*obligee*], of the other part; Then the above written obligation shall be void; but otherwise shall remain in full force.

Condition for performance of a specified agreement.

Signed, sealed, and delivered
in the presence of

(*s*) Stamp, where the amount recoverable does not exceed 300*l.*, *ad valorem* as a bond for the amount limited; in any other case, 10*s.*: see Preliminary Note, *ante*, pp. 189, 190.

VII. WITH TWO SURETIES, TO PERFORM CONTRACT FOR BUILDING, &c.

VII. BOND *from* BUILDERS, *and their* SURETIES, *for the due* PERFORMANCE *of a* CONTRACT *for* BUILDING *a* SCHOOL, *and* ALTERING *and* REPAIRING *a* HOUSE (*t*).

Obligation to a trustee for the managers of parish schools, from two principals, jointly and severally, with a separate lien part from two sureties severally, in an additional penalty.

KNOW ALL MEN BY THESE PRESENTS, that we [*builders*], both of, &c., are jointly and severally bound to [*trustees*], of, &c. (the trustees nominated by and on behalf of the managers of the schools of the parish of ——, in the county of ——), in the penal sum of £——: AND that we [*sureties*], of, &c. (as the sureties for the said [*builders*], or their personal representatives, are severally and respectively bound to the said [*trustees*], in the penal sums of £—— and £——: ALL the said several sums to be paid to the said [*trustees*], or their certain attorney or attorneys, or personal representatives. FOR which payment to be made by us the said [*builders*], we the said [*builders*], bind ourselves, jointly and severally; And for which several payments to be well and truly made by us, the said [*sureties*], respectively, we the said [*sureties*], respectively, bind ourselves respectively by these presents. Sealed with our seals. Dated the —— day of ——, 19—.

Recital of contract to erect schools, &c.;

WHEREAS the above bounden [*builders*], have lately entered into a contract, in writing, with the managers of the schools of the parish of —— aforesaid, whereby they have contracted with the said managers to do the whole of the works, in erecting and completely finishing the buildings of an intended new school, with the outbuildings, staircases, &c., attached thereto; and to make alterations and reparations in the present house in —— Street, belonging to the said managers, in every respect agreeably to the drawings, agreements, conditions, clauses, and particulars mentioned, specified, and contained, in a specification to the said contract annexed, for the sum of £—— (*u*): AND WHEREAS, at the time of entering into such agreement as aforesaid, by the said [*builders*], they and the said [*sureties*], as their sureties, agreed to execute the above written bond for the due performance of the several works so contracted to be done as aforesaid, according to the specification aforesaid. NOW THEREFORE THE

and agreement that principals and sureties should give bond for due performance of contract.

Condition for due performance of contract.

(*t*) Stamp: see last Precedent, p. 201, note (*s*).

(*u*) As to the liability of the sureties for payment of costs ordered to be paid by the contractor in a judgment given against him in an action as to the performance of the contract, see *Hoole U. D. C.* v. *Fidelity and Deposit Co. of Maryland*, [1916] 1 K. B. 25.

VII. WITH TWO SURETIES, TO PERFORM CONTRACT FOR BUILDING, &c.

CONDITION of the above written bond is such, that, if the above bounden [*builders*], or either of them, or the personal representatives of them, or either of them, should observe and perform all the stipulations and provisions in the said contract mentioned, and on their or his parts or part to be observed and performed, and should within —— calendar months from the date of the above written bond or obligation, execute, and completely finish, or cause to be executed, and completely finished, all and singular the several erections, buildings, alterations, repairs, and other works particularised in the hereinbefore mentioned specification, conformably to the same specification in all respects whatsoever, and in a good and workmanlike manner, to the satisfaction of the architect, for the time being, of the said managers: But, so that no variation in the terms of the said contract, nor extension of time given to the said [*builders*], or either of them, or the personal representatives of them, or either of them, beyond the original or enlarged time provided in the said contract for completing the said works, or performing any of the stipulations therein contained, nor any other delay or forbearance on the part of the said [*trustees*], or of the said managers, or their architect, for the time being, shall in any way release the said [*sureties*], or either of them, or the personal representatives of them, or either of them, from their or his liability, under the above written bond: Then the above written bond shall be void, or otherwise shall remain in full force.

Signed, sealed, and delivered
in the presence of

VIII. BOND *not to* CARRY *on* BUSINESS *within* HALF *a* MILE *for a certain* NUMBER *of* YEARS, *nor to solicit* CUSTOM *of* PERSONS *mentioned in a* SCHEDULE (*v*).

Obligation.

KNOW ALL MEN BY THESE PRESENTS, that I [*obligor*], of, &c., am bound to [*obligee*], of, &c., in the sum of £——, for payment whereof I bind myself by these presents. Sealed with my seal. Dated this —— day of ——.

Recital of co-partnership;

WHEREAS the above bound [*obligor*] and the above named

(*v*) Stamp: see *ante*, p. 201, note (*s*).

VIII. NOT TO CARRY ON BUSINESS.

[*obligee*] have lately carried on the business of ——, in partnership, at —— aforesaid: AND WHEREAS the said [*obligor*] and [*obligee*] have dissolved the said partnership; And the said [*obligor*], in consideration of the sum of £—— paid to him by the said [*obligee*], has assigned to the said [*obligee*] all his the said [*obligor's*] share and interest in the stock-in-trade and effects of the said partnership; and has agreed that he will not carry on the business of a ——, within the distance of half a mile of the said house at ——, during the term of —— years, as hereinafter mentioned; And will not, within the said term of —— years, solicit the custom of any of the persons whose names are mentioned or specified in the schedule hereto; or, otherwise that he will pay the sum of £—— to the said [*obligee*], as liquidated damages. NOW THE CONDITION of the above written bond is such, that, if the said [*obligor*], or his wife or widow, shall not at any time, directly or indirectly, either alone or in partnership with, or as agent for, any person or persons whomsoever, carry on the said trade or business of ——, or any branch thereof, or any trade or business connected therewith, within the distance of half a mile in any direction of the said house at ——, at any time within the space of —— years to be computed from the day of the date of the above written bond; and if the said [*obligor*], or his wife or widow, shall not, either by himself or herself, or by any other person whomsoever, at any time within the said space of —— years solicit the custom of any of the persons whose names are specified in the schedule or inventory hereunder written, to deal either with himself or herself, or with any other person whomsoever in such trade or business; or induce or prevail upon, or attempt to induce or prevail upon, any of the said persons whose names are mentioned in the said schedule not to deal, or to discontinue his, her, or their dealing with the said [*obligee*]; Or, in the event of the said [*obligor*], his wife or widow, failing to observe any of the conditions hereinbefore contained, then if the

dissolution; assignment of retiring partner's share; and agreement by retiring partner not to carry on business within half a mile; nor solicit custom of persons mentioned in schedule; and in case he should, to pay liquidated damages. Condition that obligor shall not carry on business within half a mile; nor solicit custom of any of the persons mentioned in the schedule; or attempt to induce any of the same persons not to deal with obligee; or shall pay liquidated damages (*y*).

(*y*) As to whether the sum named is to be recovered as a "penalty" or as "liquidated damages" depends on the intention of the parties as shown by the bond: *Pye* v. *British, &c. Syndicate, Ltd.*, [1906] 1 K. B. 425; *Diestal* v. *Stevenson*, [1906] 2 K. B. 345; *Clydebank, &c. Co.* v. *Don Jose Castaneda*, [1905] A. C. 6. The parties may agree upon a sum to be paid as liquidated damages in respect of the omission or commission of a particular act; but in ascertaining the intention of the parties

said [*obligor*], or his personal representatives, shall forthwith pay to the said [*obligee*], or his personal representatives, the full sum of £——, as liquidated and ascertained damages, and not as a penalty, without making any deduction or abatement thereout whatsoever; then the said bond or obligation shall be void and of no effect; otherwise shall be and remain in full force and virtue. VIII. NOT TO CARRY ON BUSINESS.

Signed, sealed, and delivered
in the presence of

THE SCHEDULE ABOVE REFERRED TO. Schedule.

IX. BOND *for* SECURING *an* ANNUITY *for the* GRANTOR'S LIFE; *without any other* SECURITY, *and* REPURCHASABLE (*z*).

KNOW ALL MEN BY THESE PRESENTS, that I, [*obligor*], of, &c., am bound to [*obligee*], of, &c., in the sum of £—— (*a*): For payment whereof I hereby bind myself (*b*) by these presents. Sealed with my seal. Dated this —— day of ——, 19—. Obligation from one to one.

WHEREAS the said [*obligee*] has contracted with the said [*obligor*], for the purchase of an annuity of £——, to be paid to the said [*obligee*], or his personal representatives, during the life of the said [*obligor*], for the price of £——; which sum of £—— Recital of contract for purchase.

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the whole circumstances of the case must be taken into consideration: *Re Newman*, 4 Ch. D. 724; *Lord Elphinstone* v. *Monkland Iron, &c. Co.*, 11 App. Cas. 332; *Willson* v. *Love*, [1896] 1 Q. B. 626; *Strickland* v. *Williams*, [1899] 1 Q. B. 382; *Public Works Commrs.* v. *Hills*, [1906] A. C. 368; *Webster* v. *Bosanquet*, [1912] A. C. 394; *Steedman* v. *Drinkle*, [1916] 1 A. C. 275; *Dunlop Pneumatic Tyre Co.* v. *New Garage and Motor Co.*, [1915] A. C. 79.

(*z*) This being a purchase of an annuity not before in existence and not created by grant or conveyance, the bond will bear an *ad valorem* stamp, as on a conveyance on sale, on the amount of the purchase-money: see Stamp Act, 1891, s. 60.

(*a*) The amount should be double the purchase-money.

(*b*) The heirs of the obligor are bound, though not here expressly mentioned: see Preliminary Note, *ante*, p. 189.

IX. ONLY FOR GRANTOR'S LIFE, REPURCHASABLE.

the said [*obligee*] has, on the day of the date of the above written bond, paid to the said [*obligor*], as he, the said [*obligor*], hereby acknowledges.

Recital of payment.

Condition, payment of annuity.

NOW THE CONDITION of the above written bond is such that if the said [*obligor*], or his personal representatives, shall pay to the said [*obligee*], or his personal representatives, during the life of him, the said [*obligor*], an annuity or yearly sum of £——, clear of deductions (except for income tax) (*c*), by equal quarterly payments, on the —— day of ——, &c., in every year, such annuity to be considered as accruing from day to day, and to be apportionable accordingly (*d*), the first quarterly payment thereof, or of the proportionate part thereof, in the event of the death of the said [*obligor*] in the meantime, to be made on the —— day of —— next ensuing the date of the above written bond; or if the said [*obligor*] shall at any time [after the expiration of three years from the date of the above written bond] give unto the said [*obligee*], or his personal representatives, notice in writing, by the space of six calendar months, of his intention to repurchase the said annuity of £——; and shall at the end of the said six calendar months from the time such notice shall be given as aforesaid, pay unto the said [*obligee*], or his personal representatives, all moneys that shall then be due for the arrears of the said annuity [together with a proportional part thereof from the last day of payment preceding such repurchase], up to the day of repurchasing the same as aforesaid; AND ALSO the sums of £—— and £——, being the original purchase-money of the said annuity, and half of a year's annuity in advance, as and in full for the repurchase of the said annuity of £—— above secured; THEN the above written bond shall be void and of no effect, otherwise shall be and remain in full force.

Declaration enabling grantor to repurchase, on giving six months' notice, and repaying original purchase-money, and half a year's annuity in advance.

Signed, sealed and delivered
in the presence of

(*c*) The annuity cannot be made free of income tax.

(*d*) See Apportionment Act, 1870, as to omitting apportionment clauses.

X. BOND *for* SECURING *an* ANNUITY *to a* MAN *for* LIFE, *and to his* WIFE *if she should* SURVIVE *him*, REPURCHASABLE *on* REPAYMENT *of the* AMOUNT *of the* PRICE *of the* ANNUITY (*e*).

X. FOR TWO LIVES, COLLATERALLY SECURED, AND REPURCHASABLE.

KNOW ALL MEN BY THESE PRESENTS, that I, [*obligor*], of, &c., am bound to [*obligee*], of, &c., in the sum of £—— (*f*): For payment whereof I hereby bind myself. Sealed with my seal. Dated this —— day of ——, 19—. Obligation.

WHEREAS the said [*obligee*] has contracted with the said [*obligor*], for the purchase of an annuity of £ ——, to be paid to the said [*obligee*], during his life and after his death to [*wife*] his wife, during her life, if she should survive him, at the price of £——. AND WHEREAS upon the purchase of the said annuity, it was agreed that the same should be secured by a deed bearing even date with the above written bond or obligation, and made between the said [*obligor*], of the first part, the said [*obligee*], of the second part, and [*trustee*], of, &c., of the third part: and also by the bond of the said [*obligor*]. AND WHEREAS the said [*obligee*] has, on the day above written, paid to the said [*obligor*] the said sum of £——, which the said [*obligor*] hereby acknowledges. Recital of contract of purchase. Reference to collateral securities. Of paying consideration.

NOW THE CONDITION of the above written bond is such that if the said [*obligor*], or his personal representatives, should pay unto the said [*obligee*] during his life, and after his death to [*wife*], his wife, if she should survive him, during her life, an annuity or yearly sum of £——, clear of all deductions (except for income tax) (*g*), by equal quarterly payments, on the —— day of ——, &c., in every year, such annuity to be considered as accruing from day to day, and to be apportionable accordingly, the first payment to be made on the —— day of —— next ensuing the day above written: THEN the above written bond shall be void and of no effect, otherwise shall be and remain in full force. Condition, payment of annuity.

AND IT IS HEREBY DECLARED, that in case the said [*obligor*], or his personal representatives, should at any time hereafter be desirous of repurchasing the said annuity, and of such his Proviso for repurchase.

(*e*) As to the stamp, see *ante*, p. 205, note (*z*).
(*f*) Double the purchase-money.
(*g*) See *ante*, p. 206, note (*c*).

X. FOR TWO LIVES, COLLATERALLY SECURED, AND REPURCHASABLE.

or their intention should give unto the said [*obligee*], if he shall then be living, or unto the said [*wife*], his wife, if she shall have survived the said [*obligee*], seven days' notice in writing; AND should, at the expiration of the time to be mentioned in such notice, pay unto the said [*obligee*], if he shall be then living, or to the said [*wife*], his wife, if she shall then have survived the said [*obligee*], the sum of £——, together with all such sums of money as at the time of repurchasing the said annuity shall be due for the arrears thereof; [AND ALSO together with a proportional part of the same annuity, up to and including the day of repurchasing the same,] as and in full for the repurchase of the said annuity; THEN he, the said [*obligee*], if he shall then be living, or the said [*wife*], his wife, if she shall then have survived the said [*obligee*], shall deliver the above written bond to the said [*obligor*], or his personal representatives, cancelled or to be cancelled; AND the said annuity shall cease and determine.

Signed, sealed, and delivered
in the presence of

XI. BOND *of* INDEMNITY, *from a* VENDOR *to a* PURCHASER, *against the* LOSS *of* TITLE DEEDS (*h*).

Bond.

KNOW ALL MEN BY THESE PRESENTS, that I, [*obligor*], of, &c., am bound to [*obligee*], of, &c., in the sum of £——: For payment whereof I bind myself by these presents. Sealed with my seal. Dated this —— day of ——, 19—.

Recital of loss of deeds, and agreement for indemnity.

WHEREAS [*recital of conveyance by obligor to obligee of certain freeholds*]: AND WHEREAS the title deeds and writings [mentioned in the schedule hereto] relating to the said freehold messuages, assured by the said deed have been lost or mislaid.

Condition.

NOW THE CONDITION of the above written bond or obligation is such, that, if at any time the several title deeds and writings relating to the said premises [and specified in the schedule hereto] shall be found, and the said [*obligor*], or her personal representatives, shall deliver or cause to be delivered the same title deeds and writings to the said [*obligee*], or his personal representatives or assigns, safe, whole, and uncancelled, or in the condition in

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(*h*) Stamp: see *ante*, p. 201, note (*s*).

which the same shall be found; [or if such deeds and writings, or any of them, being so found, shall appear to be in the custody of some person or persons entitled to them in respect of other property, then shall deliver or cause to be delivered to the said [*obligee*], his personal representatives or his assigns, true and attested copies of such deeds and writings, together with the covenant or statutory acknowledgment and undertaking of the same person or persons, for the production and safe custody of the same deeds and writings; all such copies, covenants, acknowledgments, and undertakings, as aforesaid being respectively made and entered into at the expense of the said [*obligor*], or her personal representatives;] AND ALSO, if the said [*obligor*], or her personal representatives, shall, at all times, keep indemnified the said [*obligee*], or his personal representatives, and all and every part of the said hereditaments and premises assured by the said deed against all incumbrances and mortgages whatsoever in anywise affecting the premises, except only any mortgages or incumbrances effected by the said [*obligee*], or his personal representatives, and from and against all proceedings, actions, claims, and demands which may be brought or made against him or them by any person or persons claiming any estate, title, or interest in or to the premises, or any part thereof, other than persons claiming under the said [*obligee*], or for or by reason of the want or non-production of the said title deeds and writings, or any of them, and from and against all costs, charges, and expenses which the said [*obligee*] may sustain or incur in relation to the premises; THEN the before written bond shall be void, but otherwise shall remain in full force.

Signed, sealed, and delivered
in the presence of

THE SCHEDULE ABOVE REFERRED TO.

XII. BOND *of* INDEMNITY *to the* OBLIGOR *of a* LOST BOND, *on* PAYMENT *of* MONEY *secured thereby* (*i*).

Obligation.

KNOW ALL MEN, &c., *ante*, p. 193.

Recites the bond which is lost.

WHEREAS, by a bond or obligation dated the —— day of ——, under the hand and seal of [*obligee*], of, &c., the said [*obligee*]

(*i*) Stamp: see *ante*, p. 201, note (*s*).

XII. OF INDEMNITY ON PAYMENT OF A LOST BOND.

became bound unto the said [*obligor*], in the sum of £——, with a condition for making the same void, upon payment by the said [*obligee*], or his personal representatives, unto the said [*obligor*], or his personal representatives, of the sum of £——, with interest, after the rate of five pounds per centum per annum, on the day therein mentioned.

That principal secured by bond is still due, and agreement to pay it on execution of bond of indemnity.

AND WHEREAS the said principal sum of £—— is still due and owing upon the said bond or obligation, and the said [*obligor*] having called upon the said [*obligee*] for the payment of the said sum of £——, he, the said [*obligee*], has agreed to pay the same accordingly, in full satisfaction of all principal and interest moneys due and owing upon or by virtue of the said recited bond; but the same bond having been lost or mislaid, the said [*obligor*] has consented, upon such payment being so made to him as aforesaid, to enter into a bond, conditioned for the indemnity of the said [*obligee*] as hereinafter mentioned.

That moneys secured by bond have been paid.

AND WHEREAS, in pursuance of the said agreement, the said [*obligee*] has this day paid to the said [*obligor*] the said sum of £——, as he, the said [*obligor*], hereby acknowledges.

Condition to be void on giving up bond if found, and indemnifying executor of obligor in the meantime.

NOW THE CONDITION of the above written bond or obligation is such, that if the said [*obligor*], or his personal representatives, shall, when and so soon as the said bond of the said —— day of —— shall be found, deliver or cause to be delivered the same unto the said [*obligee*], or his personal representatives, for the purpose of being cancelled; AND shall, at all times hereafter, keep indemnified the said [*obligee*], or his personal representatives, from and against all actions, costs, charges, damages, and expenses, claims and demands, which he or they shall or may pay, bear, suffer, sustain, and be put to, for or by reason or on account of the said bond, or the principal and interest moneys thereby secured, or any act, matter, or thing in anywise relating thereto; THEN, the above written bond shall be void, but otherwise shall remain in full force.

Signed, sealed, and delivered
in the presence of

CONDITIONS OF SALE.

PRELIMINARY NOTE.

Commencement of title.

By sect. 44 of the Law of Property Act, 1925, thirty years was substituted for forty years as the period of commencement of title which a purchaser may require in the absence of stipulation to the contrary; but in cases where a longer title than forty years could formerly be required, a longer title than thirty years must now be given. If the vendor wishes to offer a shorter title than thirty years, or a title commencing with a document of an exceptional character, *e.g.*, a voluntary conveyance (see *Re Marsh and Earl Granville*, 24 Ch. D. 11), then the date and nature of such document should be stated in the conditions of sale, and an express condition must be made with respect thereto.

Shorter title, or one commencing with exceptional document.

Defects revealed by recitals or *aliunde*.

By sect. 45 (1) of the Law of Property Act, 1925, the purchaser is debarred from investigating the title prior to the time prescribed by law or stipulated for the commencement of the title; subject to the proviso that a purchaser is not to be deprived of the right to the production or any abstract or copy of (1) any power of attorney under which any abstracted document is executed; (2) any document creating or disposing of an interest, power, or obligation which is not shown to have ceased or expired, and subject to which any part of the property is disposed of by an abstracted document; (3) any document creating any limitation or trust by reference to which any part of the property is disposed of by an abstracted document. But this does not prevent the purchaser from taking an objection to the earlier title based on defects revealed by recitals in abstracted deeds or *aliunde*. (*Nottingham, &c. Co.* v. *Butler*, 16 Q. B. D. 778; *Re Cox and Neve*, [1891] 2 Ch. 109; *Re Nisbet and Potts*, [1906] 1 Ch. 386.)

Enfranchisement of copyholds.

The title of the lord of the manor cannot be required on the sale of enfranchised copyholds (Law of Property Act, 1925, s. 44 (6)); but the conditions of sale should provide that the pur-

chaser shall take subject to any restrictions, &c. in the enfranchisement deed and to manorial incidents which have not been extinguished (*a*).

Leaseholds.

A purchaser of leaseholds held under a lease or underlease cannot require the title to the freehold (see Law of Property Act, 1925, s. 44 (2)), and, in the case of an underlease, cannot call for the reversioner's title (see Law of Property Act, 1925, s. 44 (3)); but he can require the underlease under which the vendor holds and the dealings therewith to be abstracted. (*Gosling* v. *Woolf*, [1893] 1 Q. B. 39.) Sect. 44 of the Law of Property Act, 1925, applies to long leaseholds, but the creation of the term must be shown. (*Frend* v. *Buckley*, L. R. 5 Q. B. 213.)

Contract for lease.

The Law of Property Act, 1925, s. 44 (9), provides that subject to agreement any preliminary contract for or relating to a lease made under a power shall not, for the purpose of an abstract to an intended assign, form part of the title or evidence of the title to the lease (*b*).

Receipt for rent.

Evidence of performance of covenants.

On a sale of leaseholds the purchaser is to assume, unless the contrary appears, that the lease was duly granted; and on the production of the receipt for the rent last due is to assume, unless the contrary appears, that the covenants have been performed up to completion. (See Law of Property Act, 1925, s. 45 (2) and (3); and see also *Highett* v. *Bird*, [1903] 1 Ch. 287; *Re Taunton, &c. Society and Roberts*, [1912] 2 Ch. 381.)

Sect. 88 of the Law of Property Act, 1925, enables or compels mortgagees selling under their statutory or express powers to

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(*a*) By the L. P. A. 1922, and the L. P. (Amendment) A. 1924, copyhold and customary tenures have been abolished after 1925, and converted into freehold or terms of years equivalent to the respective copyhold interests. For the present the land continues liable to manorial incidents such as quit and chief rents, fines, reliefs and heriots, rights to timber: see L. P. A. 1922, ss. 128—138, and the 12th sched.; and, so long as manorial incidents continue, to steward's fees. The lord's rights to mines and minerals, sporting and market rights, easements, privileges and franchises are not affected. Many of the incidents are subject to extinction with compensation. Until the incidents have become extinguished, any assurance of former copyhold, or any interest therein, must be produced within six months to the steward of the manor: L. P. A. 1922, s. 129.

Leases for lives.

(*b*) Leases for lives take effect under sect. 149 (6) of the L. P. A. 1925, as leases for a term of 90 years, determinable after the death of the original lessee or the survivor of the original lessee.

convey the legal fee simple if the term was created out of the fee simple; and sect. 89, *ibid.*, has like provisions in regard to the leasehold reversion if the mortgage term was limited out of a term of years absolute. (See also *post*, note (*r*), p. 269.)

Recitals in deeds, &c. twenty years old.

The Law of Property Act, 1925, s. 45 (6), makes recitals, statements, and descriptions of facts, matters, and parties in instruments twenty years old (unless proved to be inaccurate) evidence of the truth of such facts, matters, and descriptions. See, as to the effect of this enactment, *Bolton* v. *London School Board*, 7 Ch. D. 766, which, however, was disapproved in *Re Wallis and Grout*, [1906] 2 Ch. 206; and see also *Re Marsh and Earl Granville, supra*. Where it is intended to make recitals evidence in a deed under twenty years old, or to make them evidence of the contents of documents, or where the sale is of personalty, an express condition must be inserted (*c*).

Covenant for production of deeds.

Under the Law of Property Act, 1925, s. 45 (7), the inability to furnish a legal covenant to produce documents of title is not to be an objection to the title in case the purchaser will on the completion of the contract have an equitable title to the production of such documents. As to the purchaser's equitable right to the production of documents, see Dart, 7th ed., 483; Elph. Introd., 7th ed., 141. As to furnishing evidence of documents recorded abroad, and of lost documents, see *Halkett* v. *Earl of Dudley*, [1907] 1 Ch. 590; *Re Halifax, &c. Co. and Wood*, 79 L. T. 536. Such covenants for production as the purchaser can require are to be furnished at his expense, except for perusal and execution on behalf of and by the vendor, and on behalf of and by necessary parties other than the purchaser. (Law of Property Act, 1925, s. 45 (8).)

Expenses.

By the Law of Property Act, 1925, s. 45 (4) (subject to the contract between the parties), the expenses of (1) the production of documents not in the possession of the vendor, his mortgagee, or trustee, and of journeys incidental thereto; (2) searching for, procuring and verifying certificates and other evidence and information not in the possession of the vendor, his mortgagee, or trustee; and (3) of making copies, abstracts, or extracts of documents not in the possession of the vendor, his mortgagee, or trustee, or which are retained by him, his mortgagee, or trustee, are

(*c*) As to the effect of recitals, see *Balen* v. *Shepherd*, [1924] 2 Ch. 365.

to be paid by the purchaser (see *Willett* v. *Argenti*, 60 L. T. 735; *Re Ebsworth and Tidy*, 42 Ch. D. 23, 34; *Re Stuart and Olivant*, [1896] 2 Ch. 328); but the vendor is bound at his own expense to furnish a proper abstract of title. (See *Re Johnson and Tustin*, 30 Ch. D. 42.) As to the purchaser's right to have the title deeds on completion, see *Re Duthy and Jesson*, [1898] 1 Ch. 419.

This section does not apply to the surveyor's certificate as to completion, where a lessee covenants to complete a house to the surveyor's satisfaction (*Moody and Yates' Contract*, 30 Ch. D. 344); nor, it would seem, to a certificate under sect. 11 of the Finance Act, 1894; and sect. 42 of the Law of Property Act, 1925, provides that a stipulation contained in any contract for the sale or exchange of land made after 1925 to the effect that an outstanding legal estate is to be traced or got in by or at the expense of a purchaser, or that no objection is to be taken on account of an outstanding legal estate, shall be void; and by sect. 125, *ibid.*, purchasers are entitled to have certain powers of attorney or office copies delivered to them free of expense.

Muniments retained by vendor.

Where the vendor retains any part of an estate to which documents relate, he is entitled to retain such documents. (Law of Property Act, 1925, s. 45 (9).) "Estate" includes land, but not pure personalty. (*Re Williams and Newcastle*, [1897] 2 Ch. 144; *Re Fuller and Leathley*, 76 L. T. 646; see, too, *Re Lehmann and Walker*, [1906] 2 Ch. 640.) And by sect. 45 (9) (b), *ibid.*, the vendor is entitled to retain an instrument creating a trust which is still subsisting, or containing the appointment or discharge of a trustee of a subsisting trust.

Purchaser of two or more lots under one title.

By sect. 45 (5) of the Law of Property Act, 1925, a purchaser of two or more lots held under one title cannot require more than one abstract of such title, except at his own expense, in the absence of a contrary intention expressed in the contract for sale: note also sub-sects. (10) and (11).

Protection of solicitor or trustees adopting the Act.

By sect. 82 of the Law of Property Act, 1925, a solicitor shall not be deemed guilty of neglect or become liable by reason of omitting, in good faith, to negative the inclusion or application of any of the provisions, stipulations, or words by the Act implied in any instrument or made applicable to any contract for sale; and trustees acting by a solicitor (sub-sect. (3)), or without a solicitor (sub-sect. (4)), are to be protected in like manner.

Trustees empowered to sell, subject to depreciatory conditions.

The Trustee Act, 1925, s. 13 (1), provides that no sale by a trustee shall be impeached on the ground that any of the conditions are depreciatory, unless it appears that the consideration is thereby rendered inadequate, and by sub-sect. (2) after conveyance no sale by a trustee is to be impeached on such ground, except where collusion appears; and by sub-sect. (3) no purchaser is to make any objection to a sale by a trustee on the ground aforesaid.

Powers of trustees for sale, or with power of sale.

Sect. 12 of the Trustee Act, 1925, enables trustees to sell or concur with other persons in selling, subject to prior charges, and in such manner and subject to such conditions as they think fit. As to the duties of trustees who "concur" in a sale of trust property, together with other property not subject to the trust, see *Cooper and Allen*, 4 Ch. D. 802.

Settled land.

Under sect. 13 (9) of the Settled Land Act, 1925, dispositions of settled land are not to take effect after 1925 until the requisite vesting instrument has been executed and made. Until the instrument has been executed any purported disposition *inter vivos* by any person (other than and except as therein provided) shall operate only as a contract for valuable consideration to carry out the transaction after the vesting instrument has been executed.

Sects. 2 and 3 of the Settled Land Act, 1925, set out what constitutes a settlement and settled land.

For a form of contract by an estate owner (*d*) after the execution of a vesting instrument, see *post*, p. 319.

Upon any disposition to a purchaser by an estate owner, his title and the title to any existing equitable interests and incumbrances which are not overreached by a disposition effected through a vesting instrument will be required to be made in the ordinary way subject to the contract and conditions of sale, and the usual or relevant conditions of sale will be applicable. As to the abstract, all documents of title dated before 1926 which would before that date have required to be abstracted should be abstracted; after that date the abstracts will omit any equitable interests (*d*) which will be overreached by the disposition to which the abstract relates.

Registered land.

As to Registered Land, see *post*, p. 297.

(*d*) For the meaning of "estate owner" and "equitable interests," see L. P. A. 1925, s. 205 (v) and (x).

I. OF FREEHOLDS.

PRECEDENTS.

I. GENERAL CONDITIONS *of* SALE *of* FREEHOLDS (*including lands formerly copyhold*). VARIATIONS *for a* SALE *in* LOTS (*e*).

Conduct of sale.

1. The highest bidder [for each lot] shall be the purchaser [thereof], and if any dispute shall arise respecting any bidding the property [lot] shall be put up again for sale at the last previous and undisputed bidding, or the auctioneer may determine the dispute (*f*).

Reserve price.

2. There will be a reserve price [for each lot], and the vendor reserves the right of bidding himself, or by his agents (*g*).

Biddings.

3. No person shall advance less than £—— at any bidding, or such other sum as shall be named by the auctioneer, and no bidding shall be retracted.

Payment of deposit.

4. The [Every] purchaser shall, immediately after the sale, pay to the auctioneer [*or*, to Messrs. ——, the solicitors of the vendor] a deposit of 10 per cent. on the amount of his purchase-money (*h*),

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(*e*) This form is only adapted as it stands to a sale of the simplest nature. It is impossible to provide conditions to meet all the possible complications which may arise, but many of these are met by the Special Conditions, *infra*, pp. 254 *et seq.*, which, when required, can easily be incorporated in this form.

(*f*) For special conditions as to biddings, see pp. 254 *et seq.*

(*g*) As to the importance of mentioning "a reserve price," see the Sale of Land by Auction Act, 1867; *Rainbow* v. *Howkins*, [1904] 2 K. B. 322; *McManus* v. *Fortescue*, [1907] 2 K. B. 1; *Gilliat* v. *Gilliat*, L. R. 9 Eq. 60.

(*h*) The auctioneer is not obliged to accept a cheque for the deposit (*Johnston* v. *Boyes*, [1899] 2 Ch. 73), though it is not unreasonable for him to do so (*Farrer* v. *Lacy Hartland & Co.*, 31 Ch. D. 42). The auctioneer holds the deposit as "stakeholder" (*Harington* v. *Hoggart*, 1 B. & Ad. 577), but if the deposit is directed to be paid to the solicitor of the vendor he will hold as "agent," unless the payment is directed to be made to him "as stakeholder" (*Ellis* v. *Goulton*, [1893] 1 Q. B. 350; *Edgell* v. *Day*, L. R. 1 C. P. 80).

If the vendors are trustees for sale, or if the payment is to be made under the L. P. A. 1925, and the S. L. A. 1925, to trustees of a settled estate, any payments made to auctioneers or solicitors with the intention

and sign an agreement in the form indorsed on these conditions.

Timber, &c. to be taken at a valuation.

5. [*Valuation of timber, fixtures, &c.: see special conditions, post*, pp. 275 *et seq.*]

Completion of purchase.

6. The [Every] purchaser shall pay the remainder of his purchase-money [and the amount of the aforesaid valuation, *or* "the price of the fixtures"] to the vendor or as he shall direct, on the —— day of ——, 19—, at the office of Messrs. ——, the solicitors of the vendor, No. —, —— Street [*or*, office of Messrs. —— aforesaid], and the purchase shall be then and there completed (*i*).

Possession.

7. The possession or the receipt of the rents and profits shall be retained, and all outgoings not payable by the tenants shall be discharged by the vendor up to the said —— day of ——, and as from that date possession or receipt of the rents and profits shall be taken, and the outgoings (*k*) paid and discharged by the

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that they should hold as agents for the vendor or other persons entitled to the money, and not as stakeholders, should be earmarked with the words, "as agent(s) for the vendors," *or*, "as agens(s) for the Settled Land Act trustees."

As to the return of the deposit if no binding contract has been made, see *Chillingworth* v. *Esche*, [1924] 1 Ch. 97.

(*i*) Though time is not of the essence of this contract (L. P. A. 1925, s. 41), it may be made so by reasonable notice in case of unnecessary delay: *Stickney* v. *Keeble*, [1915] A. C. 386.

(*k*) Where the property is in hand, or the rates are not paid by the tenant, add,

"including any rates made but not demanded till after that day."

As to the incidence as between vendor and purchaser of "outgoings" incurred in relation to works executed by the vendor under a peremptory order by a sanitary authority, see *Barsht* v. *Tagg*, [1900] 1 Ch. 231; *Tubbs* v. *Wynne*, [1897] 1 Q. B. 74. As to improvement expenses incurred by a local authority under Public Health Acts and Private Street Works Act, 1892, which under these Acts become charged on the property for which they were incurred as from the completion of the works, see *Allen* v. *Driscoll*, [1904] 2 Ch. 226; *Millard* v. *Balby, &c. Council*, [1905] 1 K. B. 60; *East Ham U. D. C.* v. *Aylett*, [1905] 2 K. B. 22; *Re Bettesworth*, 37 Ch. D. 535; *Stock* v. *Meakin*, [1900] 1 Ch. 683; distinguished in *Re Farrer and Gilbert's Contract*, [1914] 1 Ch. 125; 83 L. J. Ch. 177; see also *Dale* v. *Hatfield Chase Corpn.*, [1922] 2 K. B. 282.

I. OF FREEHOLDS.

purchaser, and, if necessary, such rents, profits, and outgoings shall for the purposes of this condition be apportioned; but the purchaser [of any lot] shall not be let into actual possession or receipt of the rents and profits until the purchase is actually completed.

In case of delay purchasers to pay interest (*l*).

8. If, from any cause whatsoever, other than the wilful default of the vendor, the completion of the purchase [of any lot] shall be delayed beyond the said —— day of ——, the purchaser shall pay interest on the remainder of his purchase-money [and on the amount of the valuation aforesaid] at the rate of —— per cent. per annum, from that day till the day of actual payment thereof, and shall not be entitled to compensation for the vendor's delay or otherwise. This provision is without prejudice to any right or remedy reserved to the vendor by any other of these conditions.

Commencement of title (*m*).

9. The title shall commence [as to part of the property with a conveyance on sale dated, &c., and as to other part with a will dated, &c.] [as to lots ——, with, &c.; as to lots ——, with, &c.]. [*For special conditions, see post*, p. 258.]

Recitals: Evidence (*n*).

10. Every document dated —— years or upwards prior to the sale shall be conclusive evidence of everything recited, stated, referred to, assumed, or implied therein, and of the contents and due execution of every deed or other document recited, stated, or referred to therein, and of which neither the original nor an

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As to the registration of local land charges, see L. C. A. 1925, s. 15, which provides that such charges shall be registered in the prescribed manner by the proper officer of the local authority, and shall, except in regard to charges created or arising before the 1st January, 1926, be void as against a purchaser for money or money's worth of the legal estate in the land affected thereby, unless registered in the appropriate register before the completion of the purchase: and see L. C. A. 1925, s. 14.

(*l*) As to payment of interest, see *Re Riley*, 34 Ch. D. 386; and as to what is "wilful default," see *Re Bayley-Worthington and Cohen*, [1909] 1 Ch. 648, and the cases there cited.

(*m*) As to this condition, see Preliminary Note, *ante*, p. 211.

(*n*) This condition may be used where it is desired to extend the provisions of the L. P. A. 1925, s. 45 (6), to documents of more recent date than twenty years. As to the effect of recitals under the statutory provision, see *Re Marsh and Earl Granville*, 24 Ch. D. 11. A recital of seisin does not debar the purchaser from calling for an abstract of the prior title: *Re Wallis and Grout's Contract*, [1906] 2 Ch. 206.

attested copy is in the vendor's possession, and also that such deed or document contained no other material matter.

11. [*Here insert any special conditions as to evidence of title, stamps, registration, &c., post,* pp. 261 *et seq.*]

Identity of parcels (*o*).

12. The [Every] purchaser shall admit the identity of the property bought by him with that described in the muniments of title thereof offered by the vendor, upon the evidence afforded by a comparison of the descriptions in the particulars and muniments (*p*), and such other evidence (if any) as the vendor can supply, and the vendor shall not be required to explain or reconcile differences or discrepancies in the descriptions as to quantity or otherwise [nor to distinguish those portions of the property which were formerly copyhold from the freehold portions or the portions held under different manors of former copyholds, or the parts held under different titles] [but a statutory declaration will be made if required at the purchaser's expense that the property has been enjoyed according to the title shown for —— years and upwards prior to the day of sale].

Charges, &c. affecting the property (*q*).

13. The property [Each lot] is subject to the existing tenancies thereof, and to the rights, easements, and restrictive covenants mentioned in the particulars, and [lot ——] is subject to a

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(*o*) For other forms, see Special Conditions, p. 274.

(*p*) As to the effect of this condition if it stopped here, see *Curling* v. *Austin,* 2 Dr. & Sm. 129.

(*q*) The particulars ought to mention specifically all rights, easements, restrictions, charges, and incumbrances which are known to the vendor, and subject to which it is intended that the property shall be sold: but if, as sometimes happens, the particulars are not prepared with sufficient care or skill omissions and inaccuracies will occur which it is the object of this condition to correct; and it affords a further protection to the vendor by offering the production at or prior to the sale of documents from an inspection of which the nature and effect of incumbrances may be ascertained: *Molyneux* v. *Hawtrey,* [1903] 2 K. B. 487. As to rights and easements which are not known and are not such as ought necessarily to be known to the vendor, the purchaser will be protected by Condition 17, *post,* p. 221. As to the purchaser's right to disclosure of incumbrances, see *Re Higgins and Hitchman,* 21 Ch. D. 95; *Hardman* v. *Child,* 28 Ch. D. 712; *Re Davis,* 40 Ch. D. 601; *Re Ebsworth and Tidy,* 42 Ch. D. 23; *Pemsel* v. *Tucker,* [1907] 2 Ch. 191; and of material latent defects, *Carlish* v. *Salt,* [1906] 1 Ch. 335, distinguished in *Shepherd* v.

I. OF FREEHOLDS.

Offer of inspection.

right of way over, &c., granted [*or*, reserved] by an indenture, dated, &c., and to certain restrictive covenants contained in an indenture, dated, &c. (*r*). The counterparts or copies of the leases or written agreements (if any) with the tenants [and copies of all consents and notices given to or received from tenants in reference to improvements or renewal of tenancies, and of all statutory notices or orders affecting the property], and copies also of the above-mentioned indentures of the —— day of —— and the —— day of ——, will be produced at the sale, and may be seen at the office of the vendor's solicitors at any time within —— days previously, and the purchaser, whether he does or does not inspect the same, shall be deemed to purchase with full notice of the contents of all the said documents, and of the terms of the tenancies (*s*), and the nature and extent of the rights, easements, and restrictive covenants affecting the property, notwithstanding any incomplete or inaccurate statement thereof in the particulars or these conditions [and of the condition of the property as to repairs, party walls, and other matters]. [Where the vendor has no counterpart of any lease, tenancy, or agreement, the purchaser shall be satisfied with such evidence of the terms of the tenancy as the vendor may be able to furnish] (*t*).

Croft, [1911] 1 Ch. 521, where the defect was held to be not so material as to entitle the purchaser to rescission; and see *Re Leyland and Taylor*, [1900] 2 Ch. 625; *Heywood* v. *Mallalieu*, 25 Ch. D. 357; *Nottingham & Co.* v. *Butler*, 16 Q. B. D. 778; also *Allen* v. *Smith*, [1924] 2 Ch. 308; *De Courcier* v. *Harrolds*, [1923] 1 Ch. 565; *Merrett* v. *Schuster*, [1920] 2 Ch. 136; *Chambers* v. *Randall*, [1923] 1 Ch. 149.

(*r*) The terms of this condition do not release the vendor from the obligation to furnish an abstract or copies of all leases subsequent to the commencement of title: *Bond* v. *Basset*, 87 L. J. Ch. 160.

(*s*) As to a consent in writing to a tenant making improvements for which he becomes entitled to compensation, being a "term of the tenancy" within this condition, see *Re Earl of Derby and Fergusson's Contract*, [1912] 1 Ch. 479.

(*t*) If the property is sold subject to a mortgage, or to a rent-charge, or annuity, a further condition should be added:—

"The property is [also] sold subject to a mortgage [registered charge] for £——, with interest at —— per cent. per annum, payable half-yearly [*or*, to a rentcharge of £—— per annum] [*or*, to an annuity of £—— per annum charged thereon and payable

[14. The rents mentioned in the particulars shall be apportioned as the rents incident to the reversion in any case where more than one lot, or parts of more than one lot, are subject to the same lease or tenancy, and the consent of any tenant to such apportionment or the legal apportionment of such rent shall not be required.] Apportionment of incoming rents.

[15. No objection or requisition shall be made on account of the non-registration in the county register of any deed, will, or other document.] Registration.

16. No objection shall be raised, or requisition made, on the ground that any document or order of the Court, dated prior to the 17th May, 1888, is unstamped or insufficiently stamped (if any such there be) (*u*). Stamps.

17. The property [Each lot] is believed and shall be taken to be correctly described as to quantity and otherwise, and is sold Misdescription (*x*).

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during the life of ——], which principal money and interest [*or*, which said rentcharge] [*or*, which said annuity], shall be paid by the purchaser, who shall indemnify the vendor therefrom by a covenant in the conveyance, and a duplicate of the conveyance, to be prepared and executed by the purchaser at his own expense, shall be delivered to the vendor on completion."

A sale subject to an existing annuity may be preferable to proceedings under sect. 50 of the L. P. A. 1925, if recourse to sect. 69 of the S. L. A. 1925, is not expedient: and see also Special Conditions of Sale IX., *post*, p. 282, and note (*q*), *ibid.*

If the property or any part was copyhold and enfranchised on the 1st January, 1926, by virtue of the L. P. A. 1925, a further condition should be added:—

"As to the property which was formerly copyhold and became freehold on the 1st January, 1926, by virtue of the Law of Property Act, 1925, no agreement as to compensation has at present been made, and the property is sold subject to the lord's rights to mines, minerals, and other matters, and all manorial incidents [*or*, an agreement for compensation under sect. 138 of the Law of Property Act, 1922, has been entered into] [and the compensation money has been paid] [subject to payment of the rentcharge mentioned in the particulars], subject thereto [*continue*] such part of the property is sold subject to the lord's rights," &c.

(*u*) This condition cannot be extended beyond this date: see the Stamp Act, 1891, s. 117.

(*x*) As to what discrepancies come, or do not come, within the com-

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subject to all chief, quit, and other rents, rights of way, water, drainage, and other easements (if any): and to all liabilities to repair or contribute to the repair of roads, bridges, sewers, drains, fences, and other outgoings and incidents of tenure affecting the same. Any error, misstatement, or omission in the particulars [*or*, plan] or these conditions which shall be discovered shall not annul the sale, nor shall any compensation be allowed or paid to either the vendor or purchaser in respect thereof **[***or*, "but a reasonable compensation, if demanded in writing prior to completion (*y*), shall be allowed or paid by the vendor or the purchaser, as the case may be, the amount thereof to be fixed by the auctioneer [*or*, 'by two referees to be appointed by each party, or their umpire, pursuant to the Arbitration Act, 1889'], whose decision shall be final."**]**

Time for delivery of requisitions (*z*).

18. The [Every] purchaser shall make his objections and requisitions (if any) in respect of the title or evidence of title, or the abstract, particulars, or conditions, and send the same to Messrs. —— within —— days from the day of delivery to him or his solicitor of the abstract, and within —— days after the delivery of the vendor's replies to the purchaser's requisitions and objections (if any), the purchaser shall send to Messrs. —— a statement in writing of his further objections or requisitions (if any) arising out of such replies; and all objections and requisitions which shall not be so made and sent within the time specified shall be taken to be waived, and for this purpose time shall be

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pensation clause, see *Flight* v. *Booth*, 1 Bing. N. C. 370; *Debenham* v. *Sawbridge*, [1901] 2 Ch. 98 (defect of title); *Fawcett* v. *Holmes*, 42 Ch. D. 150 (quantity); *Jacobs* v. *Revell*, [1900] 2 Ch. 858; *Ashburner* v. *Sewell*, [1891] 3 Ch. 405 (right of way); *Re Jackson and Haden*, [1906] 1 Ch. 412; *Shepherd* v. *Croft*, [1911] 1 Ch. 521; *Re Puckett and Smith*, [1902] 2 Ch. 258; see also *post*, p. 312, note (*e*).

(*y*) See *May* v. *Platt*, [1900] 1 Ch. 616; *Thompson* v. *Hickman*, [1907] 1 Ch. 550.

(*z*) Where the objection goes to the root of the title this condition does not preclude the purchaser from raising it: *Re Tanqueray-Willaume and Landau*, 20 Ch. D. 465; cf. *Pryce-Jones* v. *Williams*, [1902] 2 Ch. 517. The condition is also governed by the provisions of sect. 42 of the L. P. A. 1925.

of the essence of the contract. Every abstract, if imperfect (*a*) in any particular, shall be deemed perfect as regards any objection or requisition if it supplies the information suggesting the same.

Power to rescind (*b*).

19. In case the [any] purchaser shall make any objection or requisition [not being necessary for the enforcement of any right under sects. 42 or 125 of the Law of Property Act, 1925] which the vendor shall be unable or [on the ground of difficulty, delay, or expense, or any other reasonable ground] unwilling to answer or comply with, the vendor may, notwithstanding any attempt to answer or to comply with such objection or requisition, or any previous or pending negotiation or litigation, upon giving to the purchaser not less than ten days' notice (*c*) in writing, rescind the contract for sale, and in that case, unless the objection or requisition shall in the meantime be withdrawn, the sale shall, at the expiration of such notice, be annulled, the purchaser, upon returning all abstracts and documents in his possession belonging to the vendor, shall be entitled to repayment of the deposit-money, without interest, costs (*d*), or expenses, in full discharge and satisfaction of all claims or demands.

Conveyance.

20. Upon payment of the remainder of the purchase-money [and of the amount of the said valuation], the vendor and all other necessary parties (if any) shall make and execute to the [each] purchaser a proper conveyance of the property [lot or lots

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(*a*) As to what is a perfect abstract, see *Hobson* v. *Bell*, 2 Beav. 17; *Morley* v. *Cook*, 2 Hare, 111; *Balen* v. *Shepherd*, [1924] 2 Ch. 365. As to the purchaser's right to rescind if the abstract is not delivered within a reasonable time, see *Compton* v. *Bagley*, [1892] 1 Ch. 313.

(*b*) As to vendor's right to rescind under this condition, see *Re Terry and White*, 32 Ch. D. 14; *Re Jackson and Haden*, [1906] 1 Ch. 412; *Re Simpson and Moy, Ltd.*, 53 Sol. J. 376; *Smith* v. *Wallace*, [1895] 1 Ch. 385; *Quinion* v. *Horne*, [1903] 1 Ch. 596; *Re Deighton and Harris*, [1898] 1 Ch. 458; *Merrett* v. *Schuster*, [1920] 2 Ch. 240; *Procter* v. *Pugh*, [1921] 2 Ch. 256. The words in square brackets are not strictly necessary, but may be useful as a reminder.

(*c*) A letter written without prejudice is not a sufficient notice for this purpose: *Re Weston* v. *Thomas*, [1907] 1 Ch. 244.

(*d*) As to costs of litigation pending at the time of rescission, see *Duddell* v. *Simpson*, L. R. 2 Ch. 102; *Isaacs* v. *Towell*, [1898] 2 Ch. 285; *Re Spindler and Mear*, [1901] 1 Ch. 908.

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purchased by him]. Such conveyance shall be prepared by and at the expense of the purchaser, and the engrossment thereof shall be delivered at the office of Messrs. —— aforesaid, before the —— day of —— aforesaid; and a draft of such conveyance shall be left not less than —— days before the delivery of the engrossment for perusal and approval on behalf of the vendor and any other necessary parties (*e*).

Sale by trustees, executors or mortgagees (*f*).

21. The vendor[s] is [are] selling as tenant for life [statutory owner] under the Settled Land Act, 1925 [as trustees], [as mortgagees], [as personal representatives] [*or, according to the case*], and shall be required to give only the statutory covenant against incumbrances (*g*). [Any "consenting party" shall not be re-

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Where registration is compulsory.

(*e*) If the property is in a district where registration is compulsory, add, "The [each] purchaser may, at his option, require the vendor to consent to the registration of such purchaser, or his nominee or nominees, as proprietor or proprietors, under the Land Registration Act, 1925, of the property [lot or lots purchased by him]."

Where the land is not already registered and any liability remains upon the owner of the legal estate, the following condition should be added:—

"20A. The [each] purchaser shall forthwith procure himself to be registered under the Land Registration Act, 1925, as proprietor of the property [lot or lots purchased by him], and shall produce the land certificate to the vendor's solicitors within —— days after completion."

As to completion when the land is already registered, see *post*, p. 305.

(*f*) For other special conditions as to the form and contents of the conveyance, see *post*, Special Conditions, pp. 287 *et seq*. As to sale by vendor of registered land, as the registered proprietor of a charge, see *post*, p. 304, Condition 8.

(*g*) See L. P. A. 1925, s. 2. In the case of any equitable interest which is protected by registration as a pending action, annuity, writ, order, deed of arrangement or land charge, and cannot be overreached by the conveyance, any stipulation that the purchaser shall not require the concurrence of the owner or the cancellation of the registration is void under L. P. A. 1925, s. 43: and see also L. P. A. 1925, s. 42; avoiding stipulations compelling a purchaser of a legal estate in land to accept a title made with the concurrence of any person entitled to an equitable interest, if a title can be made, discharged from the equitable interest without such concurrence (a) under a trust for sale, (b) under the L. P. A. 1925, or the S. L. A. 1925, or any statute.

Concurrence of incumbrancers not to be required.

quired to enter into any covenant except that he has not done anything to prevent his consenting.]

Custody of documents of title on sale in one lot (*h*).

22. All muniments of title in the vendor's possession, which relate to property included in the sale, and also to other property, will be retained by the vendor, who will give to the purchaser a statutory acknowledgment of the right to production and delivery of copies thereof, and [*or*, but not] a statutory undertaking for the safe custody thereof (*i*), such acknowledgment [and undertaking] to be prepared by and at the expense of the purchaser (*k*).

Custody of documents of title where property sold in several lots.

[23. The purchaser of the largest part in value of the property held by the same title shall be entitled, after the completion of the sale of all such property, to the custody of such of the muniments of title comprising the same as are in the vendor's possession, and shall give to the purchaser or purchasers of the other parts of the same property a statutory acknowledgment of his or their right to production and delivery of copies of such muniments, and a statutory undertaking for the safe custody thereof (*i*). If any part of such property shall not be sold at this sale the vendor shall retain the said muniments until all such property shall be sold, and the purchasers of the lots sold shall in the meantime be entitled, at their own expense, to the production of such muniments and to copies of them, but not to any acknowledgment or undertaking in respect thereof. The vendor shall retain such of the muniments of title in his possession as relate to any of the property offered for sale, and also to other property not included in the sale, and will give to the purchasers of any part of the property comprised in such last-mentioned muniments, a statutory acknowledgment of the right to production and delivery of copies thereof, and [*or*, but not] a statutory undertaking for the safe custody thereof (*i*). All acknowledgments and undertakings which shall be required under any provision of this condition shall be prepared by and at the expense of the purchaser

(*h*) See L. P. A. 1925, s. 45 (8) and (9), and s. 64.

(*i*) If the vendor is a trustee or mortgagee, the obligation to give an undertaking by him will be negatived.

(*k*) As to the purchaser's right to require the endorsement on any one document retained by the vendor of a memorandum, &c. notifying any restriction on or right over land, held under a common title contained in the disposition to the purchaser, see L. P. A. 1925, s. 200.

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or purchasers requiring the same, and if given by the vendor shall be made determinable on the vendor parting with the muniments therein referred to and procuring (without expense to the purchaser) from the person or persons to whom such muniments shall be delivered similar acknowledgments [and undertakings] to the purchasers or the persons for the time being entitled to the benefit of the vendor's acknowledgments [and undertakings].]

Completion not to be delayed as to one lot pending completion as to others, &c.

[24. Nothing contained in any of these conditions shall entitle any purchaser to delay the completion of his own purchase on account of any delay in the completion of the purchase of any other lot or lots, or to require any covenant for, or acknowledgment of, any right to production of any copy of or extracts from the conveyance of any other lot or lots.]

Non-compliance with conditions (*l*).

25. If the purchaser [any purchaser] shall neglect or fail to comply with the above conditions, his deposit-money shall, subject to any direction by the Court (*m*), be forfeited to the vendor, who shall be at liberty, with or without notice, and without tendering a conveyance, to resell the property [lot or lots] in respect of which such default shall occur, either by public auction or private contract, at such time or place, and subject to such conditions and in such manner generally as the vendor shall think fit; and if such resale shall be by auction, the property then offered for sale may be bought in, and the deficiency in price (if any) which shall happen on such resale, and the expenses of, and incident to, the present sale, or such resale, or any unsuccessful attempt to resell, shall forthwith be made good by the purchaser at the present sale, and shall be recoverable as liquidated damages. Any increase of price on such resale shall belong to the vendor.

Memorandum of Contract (*to be indorsed*).

Memorandum of contract (*n*).

I, [*purchaser*], of, &c., hereby acknowledge that at the sale by auction held this —— day of ——, 19—, I was the highest bidder

(*l*) See *Essex* v. *Daniell*, L. R. 10 C. P. 538; *Soper* v. *Arnold*, 14 App. Cas. 429; *Jones* v. *Burnell*, [1911] W. N. 153; and see note (*l*), *post*, p. 313.

(*m*) L. P. A. 1925, s. 49 (2) and (3).

(*n*) The auctioneer can sign the contract as agent for the purchaser: see *Sims* v. *Landray*, [1894] 2 Ch. 318; *Dewar* v. *Mintoft*, [1912] 2 K. B. 373; or a third person at the instance of the purchaser: *Brooks* v. *Belling-*

for, and was declared the purchaser of, the property [lot ——] described in the within particulars, subject to the within conditions, at the price of £——, and that I have paid the sum of £—— by way of deposit, and in part payment of the said purchase-money, to Messrs. ——, and hereby agree to pay the remainder thereof, and complete the said purchase, according to the aforesaid conditions.

As WITNESS my hand this —— day of ——, 19—.

[*Signature of Purchaser*] (*o*).

Purchase-money . . .	£	:	:
Deposit	£	:	:
Balance	£	:	:

As agent for [*vendor*], the vendor, I hereby confirm this sale on the within conditions, and acknowledge the receipt of the deposit above mentioned.

[*Signature of auctioneer.*]

Abstract of title to be sent to Messrs. ——.

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ham, 56 Sol. J. 503; *Keen* v. *Mear,* [1920] 2 Ch. 579. The vendor must be named or described sufficiently for identification in the contract to satisfy sect. 40 of the L. P. A. 1925, which partly replaces sect. 4 of the Statute of Frauds: *Potter* v. *Duffield,* L. R. 18 Eq. 4; *Lovesey* v. *Palmer,* [1916] 2 Ch. 233. As to the implied authority of the auctioneer to sign the contract as agent for the vendor, see *Rosenbaum* v. *Belson,* [1900] 2 Ch. 267; 69 L. J. Ch. 569. See further as to the statutory requirements, Key & Elph., 12th ed., vol. i., "General Conditions of Sale," I. "Memorandum," and note. As to the stamp on a contract for sale, see *post,* p. 306.

(*o*) The memorandum may be registered as an estate contract: see L. C. A. 1925, ss. 10 (Class C. (iv)), 12 and 13. As to the effect of an estate contract, see L. P. A. 1925, ss. 2 and 204. See also S. L. A. 1925, s. 11.

II. OF LEASEHOLDS.

II. CONDITIONS *of* SALE *of* LEASEHOLDS. VARIATIONS *for* SALE *in* LOTS.

Conduct of sale (*p*).

Right to bid reserved.

1. The highest bidder [for each lot] shall be the purchaser; and if any dispute shall arise as to the last or highest bidder, the property [lot] shall be put up at the last previous bidding. There will be a reserve price [for each lot], and the vendors reserve the right of bidding for the property [each lot] by themselves or their agents.

Biddings not to be retracted.

2. The biddings shall be regulated by the auctioneer, and no person shall retract a bidding.

Deposit.

3. The [Every] purchaser shall, immediately after the sale, pay a deposit (*q*) of ten per cent. on his purchase-money to the auctioneer and sign the subjoined agreement.

Fixtures.

4. The [tenants] fixtures and fittings [on each lot] specified in the inventory thereof to be produced at the sale (*r*), shall be taken and paid for by the purchaser [at a price to be declared by the auctioneer at the time of sale] [*or*, at a valuation to be made by two persons, one of whom shall be named by either party, and his nomination notified in writing to the other party within seven days from the day of sale, or by an umpire to be appointed by the valuers, but if either the vendors or the purchaser shall refuse or neglect to name a valuer, or to notify his nomination as aforesaid, or if the valuer named by either party shall refuse or neglect to act, then the valuation shall be made by the valuer (if his nomination shall have been duly notified as aforesaid) of the other party alone]. The decision of the auctioneer [*or* of the valuers or umpire] as to what are tenants' fixtures shall be conclusive.

Completion and possession (*s*).

5. The [Every] purchaser shall pay the balance of his purchase-money [and the amount of the said valuation] on the —— day

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(*p*) The conditions as to the conduct of sale and biddings may be varied at discretion: see Form 1, *ante*, p. 216, and Special Conditions, pp. 254 *et seq.*

(*q*) As to payment of a deposit, see *ante*, p. 216, note (*h*).

(*r*) Where the fixtures are of a costly nature the inventory should be deposited at the office of the solicitors, or some other convenient place, for inspection by intending purchasers. For other conditions as to valuation of fixtures, &c., see Special Conditions, *post*, p. 276.

(*s*) See *ante*, p. 217, notes (*i*) and (*k*).

of —— next, at the office of Messrs. ——, the vendors' solicitors, at which time and place the purchase is to be completed, and as from that day the outgoings shall be discharged and possession taken by the purchaser, but the purchaser [of any lot] shall not be let into actual possession or receipt of the rents and profits until the completion of the purchase. The rents and outgoings shall, for the purpose of this condition, be apportioned. If from any cause whatever the purchase [of any lot] shall not be completed on the said —— day of —— next, the purchaser shall pay interest on the balance of his purchase-money [and the amount of the said valuation], at the rate of five per cent. per annum, from that day until the day of completion. This provision is without prejudice to any right reserved to the vendors by any other of these conditions.

Requisitions (*t*).

6. Within ten days after the delivery of the abstract, all objections and requisitions in respect of the abstract, particulars, or conditions, shall be delivered in writing at the office of Messrs. ——, and all objections and requisitions not so delivered shall be taken to be waived, and the title shall be considered as finally accepted at the expiration of such ten days, subject to such objections and requisitions as shall be delivered within that time, and in this respect time shall be the essence of the contract.

Rescission (*u*).

7. If any objection or requisition whatsoever shall be made by the purchaser [of any lot] as to the title, particulars, conditions, or any other matter or thing [not being necessary for the enforcement of any right under either of sects. 42 or 125 of the Law of Property Act, 1925], relating or incidental to the sale which the vendors are unable or unwilling to comply with, the vendors (notwithstanding any treaty, discussion, or litigation in reference thereto, or any attempt to remove or comply with the same), shall have full power to annul the sale upon returning to the purchaser the amount of his deposit, in full satisfaction of all his claims, and without payment of interest, costs or compensation; and the purchaser shall thereupon return to the vendors the abstract of title and other papers which may have been delivered to him or his solicitor by the vendors, but

(*t*) See extension of this condition, *ante*, p. 222, Condition 18.

(*u*) For notes and another form of this condition, see Precedent I., Condition 19, *ante*, p. 223.

II. OF LEASEHOLDS.

the purchaser may, within seven days from the time of the vendors giving notice of annulment, elect to waive the objection or requisition, and take the property subject thereto.

Commencement of title (*v*).

8. The title to the property [each lot] shall commence with the indenture of lease [*or*, "underlease"] (*x*) under which the same is held, as stated in the particulars, and the purchaser thereof shall not be entitled to call for, or make any requisition or objection respecting the lessor's or previous title thereto, although the same may be referred to, or he may otherwise have notice thereof (*y*).

Vendor to endeavour to obtain lessor's licence to assign.

8A. The lease under which the property [lot ——] is held contains a restriction on assignment without licence (*z*), which is not to be unreasonably withheld in the case of a respectable and responsible tenant. The vendors will, immediately after the sale, apply for and endeavour to obtain the necessary licence, but if unable to obtain it within three weeks from the day of sale, shall be entitled to rescind the contract for sale, and thereupon the purchaser shall receive back his deposit and make no claim for costs or otherwise. [*Insert any conditions which may be necessary as to title.*]

Repairs and insurance.

9. The [Each] purchaser shall take the property [comprised in the lot purchased by him] in its present condition, and the receipt for the last payment of rent accruing due before the completion of the purchase shall be conclusive evidence that all the covenants and conditions contained in the lease have been observed and performed up to the completion of the purchase, or that all breaches (if any) of such covenants and conditions have been waived (*a*).

(*v*) See L. P. A. 1925, s. 44.

(*x*) To represent the property as held under a "lease" when it is held under an "underlease" may be a "fatal misdescription": see *Re Beyfus and Masters*, 39 Ch. D. 110. If the lease or underlease under which the property or each lot is held is not set out in the particulars as it ought to be, the date and parties should be given here.

(*y*) As to the exclusion of the right of the purchaser to call for the previous title, see Preliminary Note, *ante*, p. 211, and L. P. A. 1925, s. 44 (2) and (3).

(*z*) As to licence to assign, see L. P. A. 1925, s. 144.

(*a*) As to this condition binding the purchaser to accept the receipt as conclusive evidence, see *Lawrie* v. *Lees*, 7 App. Cas. 19. If no such condition is inserted in reliance upon sect. 45 (2) and (3) of the L. P. A. 1925,

The [Each] purchaser shall, subject to the consent of the insurance office, take over the policy of insurance (*b*) against fire, and shall pay a proportion of the premium from the day of sale.

Statement as to underleases and tenancies, and offer to produce documents (*c*).

10. The property [Each lot] is subject to the underlease or tenancy [several leases or tenancies] affecting the same [as mentioned in the particulars], and to the rents, covenants, and other terms of the lease [underlease] under which the same is held. Counterparts or copies of the underleases or agreements in writing (if any) affecting the property [each lot], and the lease or underlease under which the property [each lot] is held, will be produced at the sale, and may be inspected at any time within the previous week at the office of the vendors' solicitors, and the purchaser, whether he inspect the same or not, shall be considered to have full notice of the contents of all such documents, whether of a usual character or not, and of the terms of the sub-tenancies, notwithstanding any incomplete or inaccurate statement with respect thereto in the particulars or these conditions, and of the state of the property as to repairs, insurance, party walls, and other matters (*d*). Where the vendors have no counterpart of the underlease or agreement of tenancy, or where there is no written agreement, the purchaser shall accept such evidence of the terms of the tenancy as the vendors may be able to furnish. [*For a condition as to custody of title deeds, see Precedent I., Condition* 23, p. 225.]

Conveyance.

11. Upon payment of the balance of the purchase-money and the amount of the said valuation, at the time and place aforesaid, the vendors and all other necessary parties (if any) shall execute a proper assurance to the purchaser [of each lot], which shall be prepared by and at the expense of the purchaser, and shall be tendered or left at the office of Messrs. —— for execution by the vendors, five days before the time appointed for completion. Such assignment shall contain a covenant by the purchaser for the pay-

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the purchaser may adduce evidence of non-performance as a ground for resisting specific performance: *Re Highett and Bird*, [1903] 1 Ch. 287; *Re Taunton, &c. Building Society*, [1912] 2 Ch. 381; 56 Sol. J. 688; and see Preliminary Note, *ante*, pp. 211 *et seq.*

(*b*) As to insurance, see L. P. A. 1925, s. 47.

(*c*) As to the importance of this condition, see *Molyneux* v. *Hawtrey*, [1903] 2 K. B. 487.

(*d*) See *Re Terry and White*, 32 Ch. D. at pp. 23, 24.

II. OF LEASEHOLDS.

ment of the rent and the observance and performance of the covenants and conditions contained in the indenture of lease under which the property is held, and for keeping the vendors indemnified against all actions for the non-payment of the said rent, and the breach, non-observance and non-performance of the said covenants and conditions; and the purchaser shall also (if required) execute and deliver to the vendors a duplicate of the assignment, such duplicate to be engrossed by the vendors at their own cost (*e*).

Covenants by trustees' vendors.

[12. The vendors are trustees, and will only give the usual covenant against incumbrances implied by their being expressed to convey as trustees (*f*).

Apportionment of rents.

[13. Where more than one lot, or parts of more than one lot, are held under the same lease, the rent shall be apportioned between such lots as stated in the particulars, and each purchaser shall take his assignment subject to such rent as is mentioned in the particulars as apportioned to the property assigned to him, and shall not require such rent to be legally apportioned or the consent of the reversioner to such apportionment.]

As to variations in covenants between leases and sub-leases to tenants.

14. No purchaser shall make any objection or requisition on the ground of any discrepancy or variation between any of the covenants or conditions in the lease [underlease] under which the vendors hold and the tenants' leases.

Misdescription.

15. The property [Each lot] is believed and shall be taken to be correctly described as to quantity and otherwise, and is sold subject to all rents, outgoings, rights of way, and other easements (if any) affecting the same, and if any error, misstatement, or omission in the particulars [*or*, plan] or these conditions shall be discovered, the same shall not annul the sale, nor shall any compensation be allowed to either the vendors or purchaser in respect thereof (*g*).

Power to sell on default.

16. If the purchaser [of any lot] shall neglect or fail to comply with the above conditions, or any of them, his deposit-money shall, unless the Court otherwise directs (*h*), be forfeited to the vendors, who shall be at liberty (without tendering an assignment) to resell the property, either by public auction or private

(*e*) See *ante*, p. 224, note (*e*).
(*f*) See Prec. I., Condition 21, *ante*, p. 224.
(*g*) See *ante*, p. 221, Condition 17, and note (*x*).
(*h*) L. P. A. 1925, s. 49 (2).

contract, and at such time and subject to such conditions, and in such manner in all respects as the vendors shall think proper; and any deficiency in price on such second sale, together with all costs attending the same shall, immediately after such second sale, be made good to the vendors by the defaulter at this present sale, and in case of non-payment shall be recoverable by the vendors as liquidated damages, and any increase of price at such resale shall belong to the vendors.

MEMORANDUM (*ante*, p. 226).

III. CONDITIONS *of* SALE *of a* BUILDING ESTATE *under a* BUILDING SCHEME, *with* VARIATIONS *for* REGISTERED LAND (*i*).

Conduct of sale (*k*).

1. The highest bidder for any lot shall be the purchaser, and if any dispute arise between two or more bidders the dispute in question shall be settled by the auctioneer. No person shall advance at any bidding less than 10*l*., nor retract his bidding. The vendors reserve their right to bid by themselves or their agents.

Right to bid reserved.

Deposit (*l*).

2. Each purchaser shall immediately after the sale pay to the auctioneer a deposit of ten per cent. upon the amount of his purchase-money to the auctioneer, and sign the subjoined agreement.

Completion.

3. The purchaser of each lot shall pay the remainder of his purchase-money on the —— day of —— next, at the office of the vendors' solicitor, Mr. ——, No. —, —— Road, at which time and place the purchase shall be completed, and as from that day the outgoings shall be discharged and possession taken by the purchaser, but no purchaser shall be let into actual possession until the completion of his purchase. The outgoings shall, for the

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(*i*) As to what constitutes a building scheme, see *Reid* v. *Bickerstaff*, [1909] 2 Ch. at p. 319; and see Key & Elph., 12th ed., vol. i., IV. "Building Scheme," and note thereto; *Millbourn* v. *Lyons*, [1914] 2 Ch. 231; *Willé* v. *St. John*, [1910] 1 Ch. 325. As to framing restrictive covenants where there is no building scheme, and generally as to such covenants, see *Magnus* v. *Payne*, [1914] 2 Ch. 555, and *Chambers* v. *Randall*, [1923] 1 Ch. 149; and see K. & E., 12th ed., vol. i., "General Conditions," XII. "Restrictions."

(*k*) For other conditions as to conduct of sale and biddings, see preceding Precedents and Special Conditions, pp. 254 *et seq.*

(*l*) See *ante*, p. 216, note (*h*).

III. BUILDING ESTATE.

purpose of this condition, be apportioned. If from any cause whatever the purchase of any lot shall not be completed on the said —— day of ——, the purchaser thereof shall pay to the vendors interest after the rate of five per cent. per annum on the remainder of his purchase-money from that day until the completion of his purchase, but this provision is without prejudice to the vendors' rights under any other of these conditions.

Interest.

Requisitions.

4. All objections and requisitions in respect of the title to any of the lots, or the abstract, particulars, or these conditions (*m*), or anything appearing therein respectively, shall be stated in writing and sent to the vendors' solicitor within ten days from the delivery of the abstract, and all objections and requisitions not sent within that time shall be considered to be waived, and in this respect time shall be deemed to be the essence of the contract (*n*). And within —— days after the delivery of the vendors' replies to the purchaser's requisitions and objections (if any), the purchaser shall send to Messrs. —— a statement in writing of his further objections or requisitions (if any) arising out of such replies. If any purchaser shall make any objection or requisition which the vendors shall be unable or unwilling to remove or comply with, the vendors shall be at liberty (notwithstanding any intermediate negotiation or litigation in reference to such objection or requisition or attempt to remove or comply with the same) to rescind the contract for sale to such purchaser upon giving to him not less than ten days' notice in writing, and thereupon, if the objection or requisition shall not in the meantime be withdrawn, the sale to such purchaser shall, at the expiration of the notice, be annulled, and in that case the purchaser shall be entitled to repayment of his deposit-money, without interest, costs, or expenses, in full satisfaction of all claims and demands, and shall thereupon return all abstracts and documents in his possession belonging to the vendors.

Power to rescind.

Building scheme (*o*).

5. The property, which forms part of the —— estate, has been plotted out as shown on the plan annexed to the par-

(*m*) See *Re Terry and White*, 32 Ch. D. pp. 24, 25; *Re Deighton and Harris*, [1898] 1 Ch. 458.

(*n*) See *ante*, p. 223, note (*b*).

(*o*) If the land is registered (with a possessory title), then in place of Condition 5 as above insert the following condition:—

"5. The property, forming part of the —— estate, has been

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ticulars, and is now offered for sale in lots as a building estate in accordance with a general scheme applicable to the whole of the property and subject to and with the benefit of the stipulations contained in the schedule hereto. Each purchaser shall be bound to observe and perform such of the said stipulations as shall be applicable to the lot or lots purchased by him for the benefit of the purchasers of the remaining lots, and the conveyance to each purchaser shall contain covenants by the purchaser with the vendors, and separately with each purchaser, to whom an assurance of any lot or lots shall have been previously made, to observe and perform the said stipulations; such covenants to be framed so as to bind the lot or lots purchased, as far as possible, into whosesoever hands the same may come, but not so as to bind the covenantor for any breach which shall occur after he has parted with the property. But this condition shall not entitle any purchaser to be made a party to the conveyance to any other purchaser, or to make any requisition or inquiry in relation thereto.

Vendors to be at liberty to sell the unsold lots free from the stipulations.

6. As to any part of the property which may not be sold at the present sale, or the sale of which shall not be completed, the vendors shall be at liberty to sell or dispose thereof free from the said stipulations, and in such lots, and subject to such conditions, restrictions, and stipulations as they shall think proper.

Commencement of title.

7. The title shall commence as to all the property with an indenture, &c. [*or*, "as to Lots 1 and 2, with, &c., and as to Lots 3, 4, and 5, with, &c."] [*Here insert special conditions as to title.*]

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plotted out in accordance with a building scheme, No. ——, filed in the Land Registry, under the Title No. ——, applicable to the whole property, the sale plan being a reduced copy of the plan No. ——, filed under the same title, and the property is now offered for sale as a building estate in the lots numbered for sale in the said plan, subject to and with the benefit of the stipulations contained in the said scheme which are set out in the schedule hereto, but this condition shall not entitle any purchaser to be made a party to any assurance to any other purchaser, or to make any requisition or inquiry with respect thereto."

Restrictive covenants may be registered as a land charge: L. C. A. 1925, s. 10; and see also the L. R. A. 1925, s. 50, which provides, in regard to registered land, that entry of notice on the register of restrictive covenants shall take the place of registration as a land charge.

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Identity of parcels.

8. Every purchaser shall admit the identity of the property purchased by him with that described in the muniments of title upon the evidence afforded by a comparison of the descriptions in the particulars and muniments, and such other evidence (if any) as the vendors can supply. The vendors shall not be required to explain or reconcile any differences or discrepancies in the descriptions as to quantity or otherwise.

Recitals, &c. to be evidence (*p*).

9. Every recital or statement, whether of fact or conclusion of law, contained in any abstracted deed, will, or other document, dated [fifteen] years prior to the day of sale, shall be sufficient evidence of the fact, conclusion, or matter so recited or stated, and of the contents and due execution of such deed, will, or other document (*q*).

As to errors in description, &c. (*r*).

10. Each lot is believed and shall be taken to be correctly described as to quantity and otherwise, and is sold subject to all chief, quit, and other rents and outgoings, easements (if any), and incidents of tenure affecting the same. If any error, misstatement, or omission in the particulars or these conditions shall be discovered, the same shall not annul the sale, nor shall any compensation or allowance be made in respect thereof (*s*).

Stamping of documents.

11. [*See Precedent I., Condition* 16.]

Registration.

12. [*See ibid., Condition* 15.]

Conveyance.

13. Upon payment of the remainder of his purchase-money, each purchaser shall be entitled to a proper assurance of the lot or lots purchased by him (*t*), such assurance to be in accordance

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(*p*) See *ante*, p. 218, and note (*n*).

(*q*) See Preliminary Note, *ante*, p. 213.

(*r*) In the case of registered land, say,

"The property which is sold according to the plan No. ——, filed in the Land Registry, under the above title, is believed, &c.," and add to the condition,

"The sale plan is only intended to indicate the position of the lots and roads, and is not to be taken as being accurate as to dimensions."

(*s*) As to the importance of specifically mentioning easements, charges, &c. known to affect the property, see *ante*, p. 219, note (*q*); and as to what discrepancies come within this clause, see *ante*, p. 221, note (*x*).

(*t*) In the case of registered land, add,

"to be effected by an unregistered conveyance and a proper transfer."

with printed forms which will be delivered to each purchaser on his acceptance of the title. The blanks in such printed form shall be filled, and any alterations necessitated by the death of parties or other matters prior to completion shall be made by and at the expense of such purchaser, who shall, on completion, execute and deliver to the vendors a duplicate (*u*) of such conveyance, to be prepared at the vendors' expense. Copies of such printed forms will be produced at the sale, and may be seen at the office of the vendors' solicitors at any time within —— days prior to the sale, and each purchaser, whether he inspects such copies or not, shall be considered to purchase with full notice and approval of the contents of the said printed forms.

Notice of conditions to be endorsed on title deed (*x*).

14. Notice of these conditions shall be endorsed on the conveyance to the vendors, dated the —— day of ——, of the property now to be sold.

15. [*If the vendors are trustees or mortgagees, add Condition* 21, *Precedent I.*, p. 224.]

Custody of title deeds.

16. [*Custody of title deeds, see Precedent I., Conditions* 22 *and* 23, *ante,* p. 225; *and special conditions, post,* p. 295.]

Failure to comply with conditions.

17. If any purchaser shall neglect or fail to comply with these conditions, his deposit-money shall, unless the Court otherwise directs (*y*), be forfeited to the vendors, who shall be at liberty, with or without notice, and without previously tendering a conveyance to the defaulter, to resell the lot or lots in respect of which such default shall occur, either by public auction or private contract, and the deficiency of price (if any) which shall happen

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(*u*) In the case of registered land, say,

"a duplicate counterpart unregistered conveyance."

And after this condition add conditions as to provisional registration or priority notice, for which see Special Conditions, p. 304, Forms 13 and 14.

(*x*) See the provisions of the L. P. A. 1925, s. 200, which do not apply to dispositions of registered land: *ibid.* sub-s. (3). As to the effect of registering the conditions under the L. C. A. 1925 (whether the land is registered or not), see sects. 10 and 13 of that Act; and see also L. P. A. 1925, ss. 199 and 200; and, by sect. 50 (2) of the L. R. A. 1925, registration in the Land Registry affects with notice the proprietor of the land and the persons deriving title under him except incumbrancers and others, who, at the time of entering the notice, may not be bound by the conditions.

(*y*) L. P. A. 1925, s. 49 (2) and (3).

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on such resale, and all expenses incidental to the present sale, or such resale, or any attempted sale, shall forthwith be made good and paid by the defaulter at the present sale as liquidated damages, and any increase of price on such resale shall belong to the vendors.

Schedule of Stipulations.

For the General Protection and Advantage of Residents on the Estate.

Fences.

1. Each purchaser shall, within one calendar month after being let into possession of the land purchased by him, make, and for ever afterwards maintain in good repair, good and sufficient boundary fences thereon, next to the road or roads on which the same fronts, and also at the sides or back thereof marked "T" within the boundary on the plan annexed to the particulars, of a height not less than five feet, nor more than six feet, at the sides and back, and not more than four feet six inches in front, such fences to be constructed of brick or oak park paling.

Building line.

2. The line of frontage of the buildings on the several lots shall not approach nearer to any of the roads than the line marked "building line" on the said plan, except verandahs, bay windows, porches, or similar structures, which shall not project more than —— feet beyond such line, and except [boundary] walls or fences not exceeding the respective heights at the sides and back and in front, specified in clause 1.

Houses to be built.

3. Not more than one detached house, or two semi-detached, shall be erected on one plot, or two detached, or four semi-detached houses on three plots, without the written consent of the vendors. All houses shall be erected in a substantial and workmanlike manner of new materials, and of the like elevation, and of a similar character to the houses already built upon the estate, according to plans and elevations to be submitted to the vendors for their approval before the works are commenced. Such houses shall cost in labour and materials (exclusive of coach-house and stables) not less than the amounts following:—

In the —— Road, detached houses, £—— each; semi-detached houses, £—— each.

In the —— Road, detached houses, £—— each; semi-detached houses, £—— each.

In the —— Avenue, detached houses, £—— each; semi-detached houses, £—— each.

[On the plots —— to —— inclusive, on the said plan, in —— Street, shops may be built, the cost, as aforesaid, to be not less than £—— each, or private dwelling-houses, costing, if detached, not less than £—— each, or, if semi-detached, not less than £—— each.]

Private dwelling-houses only.

4. No building shall be erected on any lot [except the said lots numbered —— and —— on the said plan] other than a private dwelling and coach-house, stables, motor-house or garage, offices, and outbuildings thereof. And no building so erected shall be used for any purpose other than that of a private dwelling-house.

No temporary erection to be placed on lots.

5. No temporary erection or shed of any kind shall be placed on any lot other than sheds or workshops to be used for purposes incidental to and during the erection of permanent buildings thereon, and no caravan, stall, swing, or house on wheels shall be placed or allowed to remain on any lot.

Gravel, &c. not to be removed.

6. No gravel, sand, chalk, turf, or earth on any lot shall be dug or excavated beyond that which it may be necessary to remove for the purpose of laying the foundations, basements, or approaches, or for use in the buildings, or in the gardens and grounds thereof.

Public-house.

7. Lot No. —— on the plan has been reserved for an inn, hotel, or public-house, and shall not be used for any other purpose without the consent in writing of the vendors, but may, with such consent, be used for the purpose of a private dwelling-house or shop. Provided always, that if the purchaser, after using his best endeavour to get the premises fully licensed, shall be unable to obtain such licence, then lot —— may, without such consent, be used for a private dwelling-house only, or, with such consent, as a shop.

Offensive trades, &c.

8. No operative machinery shall be fixed or placed on any lot. Nor shall any lot, or the buildings to be erected thereon, be used for any offensive, noisy, or dangerous trade, business pursuit or occupation (*z*), or for any purpose which shall be in any way a

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(*z*) Sometimes specified trades or businesses are forbidden, as, for instance,

["Save as is hereinbefore expressly provided] no lot, or any building thereon, shall be used as a hotel, tavern, or public-house,

III. BUILDING ESTATE.

nuisance, injury, or annoyance to the vendors, their heirs, or assigns, or their tenants, or to the owners or occupiers of any adjoining property, or which may tend to depreciate the value of the rest of the estate as a residential estate.

Roads.

9. The sites of the several roads shown on the said plan, which are now private roads, will be retained by the vendors, who will grant to the respective purchasers a right of way over the said roads for all purposes, reserving to themselves, their heirs and assigns, the right to make sewers or drains, gas or water mains thereunder, and every purchaser, in proportion to the extent of the frontage of the lot or lots purchased by him towards any such road, shall contribute with the owners of other lots fronting the same road to the expense of keeping the same in repair, until it shall be taken over and become repairable by the local authority, and also to the cost and charges of, and incidental to, the making up of such road upon its being so taken over by the local authority.

MEMORANDUM (*ante*, p. 226).

IV. CONDITIONS *of* SALE *of* REVERSIONARY INTERESTS, POLICIES *of* ASSURANCE, ANNUITIES, *and other* CHOSES *in* ACTION.

General Conditions.

Biddings.

1. The highest bidder for each lot shall be the purchaser. There will be a reserve price [for each lot], the vendor reserving the right to bid. No bidding shall be retracted, and if a dispute shall arise as to any bidding the lot in dispute shall be put up again. The amount of advance for each bidding shall not be less than £—— for lots —— and ——, £—— for lots —— and ——, and £—— for lots —— and ——.

Deposit (*a*).

2. Each purchaser shall, at the close of the sale to him, pay

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or for the sale of spirituous liquors, or as a hospital, asylum, church, chapel, mission-house, or school, or for any offensive, noisy, or dangerous trade," &c.

As to what are offensive businesses, see *Tod-Heatly* v. *Benham*, 40 Ch. D. 80; *Wauton* v. *Coppard*, [1899] 1 Ch. 92.

(*a*) See *ante*, note (*h*), p. 216.

to the auctioneers a deposit of twenty per cent. on his purchase-money, and sign an agreement in the form subjoined, and shall pay the residue of the purchase-money at the offices of the respective vendors' solicitors on the —— day of ——, at which place and time the purchase shall be completed. If from any cause other than the vendor's wilful neglect or default, any purchase shall not be completed on that day, the purchaser shall pay interest on his unpaid purchase-money at the rate of five per cent. per annum from that day until completion (*b*), subject and without prejudice to the vendor's rights under the last of these conditions.

When purchaser to become entitled.

3. On the completion of the purchase of any lot, the purchaser shall become entitled thereto (1) in the case of any life interest in possession, as from the day fixed for completion, together with the current income accrued due but not then payable; (2) in the case of any annuity in possession, as from the last day for payment preceding the day fixed for completion; and (3) in the case of any reversionary interest or policy, as from the day of sale.

Premiums on policies.

4. The vendor will pay all premiums on policies falling due after the sale, but before completion, such payment, with interest in the meantime at four per cent. per annum, to be refunded to the vendor by the purchaser on completion.

Sale subject to death duties, &c., special conditions.

5. Each lot is sold subject to death duties (if any) becoming payable in respect thereof, and subject also to the special conditions relating to such lot. In case of discrepancy between such special conditions and these general conditions, the special conditions shall prevail.

Conveyance.

6. Upon payment of the residue of his purchase-money, the vendor will execute to each purchaser a proper assurance or transfer of the lot or lots purchased by him. In any case where the vendor is selling as personal representative, trustee, or mortgagee, he shall not be required to enter into any covenant except the express or statutory implied covenant that he has not incumbered.

Requisitions.

7. Each purchaser shall deliver in writing to the vendor's solicitors his objections and requisitions (if any) on the title, particulars, or conditions, within —— days after the delivery

(*b*) See *ante*, p. 218, note (*l*).

IV. REVERSIONARY INTERESTS, &C.

of the abstract, and every objection or requisition not so stated shall be taken to be waived, and if no objection or requisition shall be so stated, the title shall be taken to be accepted, and for these purposes time shall be of the essence of the contract (*c*).

Rescission.

8. If any purchaser shall make and insist on any objection or requisition which the vendor shall be unable or unwilling to answer or comply with, the vendor may, notwithstanding any previous negotiation or litigation, on giving to the purchaser not less than ten days' notice in writing, annul the sale, in which case, unless the objection or requisition is in the meantime withdrawn, the sale shall, at the expiration of the notice, be annulled, the purchaser being thereupon entitled to a return of his deposit, but without interest, costs, or expenses.

Errors or omissions.

9. If any error, misstatement, or omission shall be discovered in the description of any lot, or as to the ages of parties, or in any other respect, the same shall not annul the sale, but a reasonable compensation, if demanded in writing before completion, shall be allowed or paid by the vendor or the purchaser, as the case may be, the amount thereof to be fixed by two referees to be appointed by each party, or their umpire, pursuant to the Arbitration Act, 1889, whose decision shall be final.

Non-compliance with conditions.

10. [*Non-compliance with conditions, see Precedent III., Condition* 17, *ante*, p. 237.]

LOT 1.

Policy of assurance.

A policy of assurance for the sum of £——, in the —— Assurance Society, on the life of a person born on the —— day of ——, under the annual premium of £——, payable on the —— of ——. Bonus additions to December 31st, 19—, £——.

Solicitors: Messrs. A. B. & Co., No. —, Gray's Inn Square.

Special Conditions.

1. The title shall commence with the policy [an indenture of settlement, dated, &c.].

Receipt for premium.

2. The production of the receipt for the last premium payable before completion shall be accepted as sufficient evidence that the policy is in full force.

(*c*) For an extension of this condition to replies to requisitions, see *ante*, p. 222, Form 18.

3. No evidence shall be required of the age of the assured, or as to the nature and truth of the statements upon which the policy was effected. Evidence of age.

4. It shall be assumed that the person to whom the policy was granted had an insurable interest in the life assured (*d*). Insurable interest.

LOT 2.

The life interest in possession of a lady born on the —— day of ——, in a ——th share of the income of a trust fund now represented by the investments and property specified in the schedule below. Life interest.

SCHEDULE.

[*Set out the trust funds.*]

Solicitors: Messrs. —— [*name and address*].

Special Conditions.

1. The title shall commence with the will [an indenture of settlement], dated, &c.

2. A statement by the trustees of the said will [settlement] that the trust funds are fully and correctly stated in the above schedule shall be accepted as conclusive evidence that such is the case. Evidence as to trust funds.

3. The certificate of her birth, verified by the statutory declaration of ——, shall be deemed to be conclusive evidence of the age of the tenant for life. Evidence of age.

LOT 3.

A contingent reversion in one ——th of a trust fund now represented by the investments specified in the schedule below, receivable on the death of a person born on the —— day of ——, who has not been married, in the event of his leaving no child. The Contingent reversion.

(*d*) As to insurance by one person on the life of another, see 14 Geo. 3, c. 48, s. 1; and *A.-G.* v. *Murray*, [1904] 1 K. B. 165; *Harse* v. *Pearl Life Insurance Co.*, *ibid.* 558; *Griffiths* v. *Fleming*, [1909] 1 K. B. 805; *Goldstein* v. *Salvation Army Assurance Society*, [1917] 2 K. B. 291, 362. See other conditions as to policies, Special Conditions, *post*, pp. 268 and 269.

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—— Assurance Society will entertain a proposal for an insurance to cover the risk above referred to at a single premium of £——.

SCHEDULE.

[*State particulars of funds.*]

Solicitors: Messrs. —— [*name and address*].

Special Conditions.

1. The title shall commence, &c.

Evidence of trust funds.

2. A statement by the trustees of the said will [settlement] as to the correctness of the above schedule shall be accepted as conclusive evidence thereof.

3. A statutory declaration to be made by —— shall be accepted as conclusive evidence that the person above referred to has not been married; and a certificate of birth verified by a like declaration shall be deemed conclusive evidence of his age.

4. [No] Succession duty [at the rate of —— per cent.] will be payable on the death, leaving no child, of the person referred to.

5. The purchaser shall assume that estate duty will be payable on the death of the person at the rate at which it would have been payable if he had died immediately after completion and there was no aggregation (*e*).

LOT 4.

Annuity charged on income of trust funds.

An annuity of £—— per annum, payable during the life of a lady born on the —— day of ——, and charged upon or payable out of the income of the trust funds specified in the schedule below.

SCHEDULE.

[*Set out the trust funds.*]

Solicitors: Messrs. —— [*name and address*].

Special Conditions.

[*These will be the same as in Lot* 2.]

MEMORANDUM.

[*See Precedent I.*, p. 226.]

(*e*) It is not advisable to state the rate at which estate duty will be payable.

V. CONDITIONS *of* SALE *of* SHARES, STOCK *and* DEBENTURES.

Biddings.

1. The highest bidder for each lot shall be the purchaser thereof. There will be a reserve price for each lot, the vendor reserving the right to bid. No bidding shall be retracted, and if a dispute shall arise as to any bidding the lot in dispute shall be put up again.

Deposit and completion.

2. The purchaser of each lot shall, at the close of the sale to him, pay to the auctioneers a deposit of —— per cent. upon and in part payment of the purchase-money, and furnish his full name and address and description, and (as regards the shares in the —— Life Assurance Society) his qualification to hold shares, to the auctioneers, and also sign the contract hereto subjoined, and shall pay the remainder of the purchase-money on the —— day of ——, 19—, at the office of Messrs. ——, the vendor's solicitors, situate at ——, in the county of ——, at which time and place the purchases shall be completed. If from any cause whatever, other than the vendor's wilful neglect or default, any purchase shall not be completed on the before mentioned day, the purchaser shall pay interest on his unpaid purchase-money, after the rate of 5 per cent. per annum, from that day until the completion of his purchase, subject and without prejudice to the rights reserved to the vendor by the last of these conditions.

Interest.

Arrangement for transfers.

3. The vendor will, if required so to do, within seven days after the close of the sale, forward the statement of the name, address, and description, and (where necessary) qualification to hold shares, of the respective purchasers to the secretaries of the respective companies, with a request that a transfer may be prepared. Upon payment of the residue of the purchase-money the vendor will execute transfers of the shares and of the debentures to the respective purchasers.

3A. Each purchaser shall accept a transfer of the shares purchased by him and shall indemnify the vendor as from the date of sale in respect of calls or other payments in respect of such shares.

3B. Unless otherwise stated in the conditions or particulars of sale, all calls or other payments due and payable before the date of sale shall be paid by the vendors, and all interest and other payments or dividends payable before the date of sale shall be retained by or paid to the vendors. All calls, dividends, interest, and other payments not payable before the date of sale shall

v. OF SHARES AND MORTGAGE DEBENTURES.

(subject to these conditions) be discharged by or belong to the purchaser, as the case may be. No apportionment will be made of any calls, dividends, interest, or other payments.

Inquiries as to title of vendor.

4. All inquiries (if any) as to the vendor's title are to be made by and at the expense of the purchasers requiring the same, and all other things to be done, or expenses to be incurred in or about the verification of the vendor's title, or the transfer and registration of the shares and debentures into and in the names of the respective purchasers, are to be at their expense.

Power to rescind.

If any purchaser of shares shall not be accepted by the board of directors of the company before the said —— day of ——, 19—, or if the purchaser shall, at any period prior to completion of the purchase, make any objection or requisition as to title or otherwise, which the vendor shall be unable or unwilling to comply with on any ground, and notwithstanding any intermediate negotiation, the vendor may, by notice in writing to the purchaser, rescind the contract for sale. In such case the vendor will, within one week after such notice, repay to the purchaser his deposit-money, which is to be accepted by him in satisfaction of all claims on any account whatever, and without payment of interest or costs.

Compensation.

5. If any error or misstatement shall be discovered in the particulars the same shall not annul the sale, but an allowance or compensation shall be made by or to the vendor, as the case may be, the amount, in case of dispute, to be settled by arbitration in manner provided by the Arbitration Act, 1889.

Power of resale on default.

6. If any purchaser shall fail to comply with any of these conditions, and to complete his purchase agreeably thereto, the deposit-money of the defaulting purchaser shall, subject to any direction by the Court, be absolutely forfeited to the vendor, who shall be at liberty to resell the lot without notice or tender of a transfer or assignment, and any deficiency in price, with the attendant costs, shall be paid by such purchaser and recoverable from him as liquidated damages.

MEMORANDUM OF CONTRACT (*f*), *ante*, p. 226).

(*f*) Stamp, *ad valorem*.

VI. CONDITIONS *of* SALE *of* FURNITURE *or other* GOODS (*g*).

VI. OF FURNITURE OR OTHER GOODS.

Conduct of sale.

1. The highest bidder shall be the purchaser, and if any dispute shall arise respecting any bidding, the lot shall be put up again, or not, at the auctioneer's discretion, to whom is reserved the right of refusing any bidding and of withdrawing any lots from the sale. There will be a reserve price for each lot.

Biddings.

2. No person shall advance at any bidding up to 1*l.* less than one shilling; nor at any bidding from 1*l.* up to 2*l.* less than two shillings; and so on in proportion.

Deposit, &c.

3. The purchaser of each lot shall, if required, pay down immediately a deposit of 25 per cent. in part payment of his purchase-money, and shall give his or her name and address; such deposit shall be applicable, at the auctioneer's discretion, in or towards payment for any of the lots bought by such purchaser.

Completion. Compensation.

4. The lots shall be paid for before four o'clock the day after the sale, whether genuine and authentic or not, with all faults and errors of description, and cleared and removed at the purchaser's expense and risk, the auctioneer not being responsible for the correct description, genuineness, or authenticity of, or for any fault or defect in any lot, and making no warranty whatever (*h*). If from any cause the auctioneers are unable to deliver a lot the deposit money shall be returned, but without compensation for non-delivery.

5. The auctioneer may sell two or more lots as one lot, and may withdraw any lot or lots, and may alter these conditions at the time of sale.

Power to resell on default.

6. On failure of any purchaser to comply with the above conditions, the money deposited by him in part payment as aforesaid shall be forfeited; and all lots not cleared as aforesaid shall, without notice, be resold by public or private sale, and the deficiency (if any), as well as the expenses of such resale, shall be made good by the defaulters at this present sale, and shall be recoverable as liquidated damages, and any increase in price on such resale shall belong to the vendor.

(*g*) See Sale of Goods Act, 1893.

(*h*) As to warranty, see Goodeve, P. P., 5th ed., p. 69; and see *Clayton* v. *Le Roy*, [1911] 2 K. B. 1031.

VII. BY TENDER.

VII. CONDITIONS *of* SALE *by* TENDER.

Date for delivery of tenders.

1. Any person desirous of competing for the purchase of the property described in the particulars, shall subscribe his name and address to the tender subjoined to these conditions, and forward the same, under seal, to the office at —— of the vendor's solicitor, Mr. ——, on or before the —— day of ——, 19—.

Acceptance of tender.

2. The vendor shall have the unqualified right of selecting any tender, or rejecting any tender, and if any tender shall be accepted, the vendor shall give notice of his acceptance by letter, transmitted by post, to the person making the accepted tender, according to the address given in the same, within eight days from the said —— day of ——, 19—.

Deposit.

3. Within two days after the receipt of the said notice, the purchaser shall pay to the vendor's solicitor, as stakeholder (*i*), a deposit of —— per cent. on the amount, and in part payment of his purchase-money, and sign the subjoined agreement.

Conveyance.

4. The conveyance [assignment] of the property purchased shall be prepared by and at the expense of the purchaser.

Completion.

5. The remainder of the purchase-money shall be paid to the vendor's solicitor, at his said office, on the —— day of ——, 19—, at which time and place the conveyance [assignment] shall be delivered and the purchase completed.

Commencement of title.

6. The title shall commence with an indenture of conveyance by way of sale, dated the —— day of ——, 19— (*j*).

Identity.

7. The purchaser shall admit the identity of the property purchased with that comprised in the muniments offered by the vendor, as the title to such property, upon a declaration to be furnished (if required) at the purchaser's expense, that the purchased property has been possessed for the last thirty years under the said title.

Requisitions and rescission.

8. The purchaser shall deliver in writing any objections or requisitions he may desire to make in respect of the title or otherwise within ten days from the day of the delivery of the abstract, and in default of such objections and requisitions (if none), and subject to such (if any), shall be deemed to have accepted the title. If any objection or requisition whatsoever (not being necessary for the enforcement of any right under sect. 42 or

(*i*) See *ante*, p. 216, note (*h*).

(*j*) Add any conditions as to title or other matters which may be necessary.

sect. 125 of the Law of Property Act, 1925), shall be made by the purchaser as to the title or otherwise which the vendor shall be unable or unwilling to comply with, then the vendor shall have full power at any time, by notice in writing to be given to the purchaser or his solicitor, to annul the sale, and shall thereupon return to the purchaser his deposit in full satisfaction of all his claims, and without payment of interest, costs, or other compensation whatever, and the purchaser shall thereupon return to the vendor all papers which may have been delivered to him by the vendor.

Compensation (*k*).

9. The property is believed, and shall be taken to be, correctly described as to quantity and otherwise, and is sold subject to all easements (*l*) if any subsisting thereon, and if any error, or misstatement, or omission in the above particulars shall be discovered, the same shall not annul the sale, and no compensation is to be made or allowed to the purchaser in respect thereof.

Power of resale.

10. If the purchaser shall not pay the balance of his purchase-money at the time specified, and in all other respects perform these conditions, the said deposit shall be forfeited; and it shall be in the option of the vendor to annul the sale and to resell the property either by tender or by public auction or private contract, at such time and subject to such conditions and in such manner as the vendor shall think proper; and any deficiency in price on such second sale, together with the costs attending the same, shall immediately after such second sale be made good to the vendor by the defaulter at the present sale, and in case of non-payment shall be recoverable by the vendor as liquidated damages.

Form of Tender.

Form of tender.

To Mr. [*vendor*].

I hereby offer to purchase the property described in the annexed particulars, subject to the above written conditions of sale, at the price of £——, and agree to pay the said purchase-money in accordance with the said conditions, and in all other respects to observe and perform the stipulations therein contained and on the part of the purchaser to be observed and performed.

Signature in full ——.

Residence ——.

Date ——.

(*k*) For another form see *ante*, p. 221, Condition 17.

(*l*) See *ante*, p. 219, note (*q*).

STATUTORY FORM OF CONDITIONS OF SALE, 1925 (*m*).

Date fixed for completion.

1. The date for completion shall, unless otherwise agreed, be the 1st day after the expiration of seven weeks from the time when the contract is made, or if that day is a Sunday, Christmas day, Good Friday or Bank Holiday, the next following working day.

Place for completion.

2. Completion shall take place at the office of the vendor's solicitors, or if the vendor so requires at the office of the solicitors of his mortgagees, if any.

Possession and apportionment of outgoings.

3.—(1) The purchaser paying his purchase money or, where a deposit is paid, the balance thereof, shall, as from the date fixed for completion (but subject to the execution of any conveyance which ought to be executed by him), be let into possession, or into receipt of rents and profits, and shall, as from that date, pay all outgoings, and up to that date all current rents, and all rates, taxes, and other outgoings shall (if necessary) be apportioned, and the balance shall be paid by or allowed to the purchaser on actual completion, and for this purpose the purchaser shall be liable to pay to the vendor a proportionate part of the current rents accrued in respect of the property up to the date fixed for completion:

Provided that all rates shall be apportioned, so far as practicable, according to the period for which they are intended to provide, and not as running from the dates when the same are made or allowed.

(2) Where as respects any rate the date fixed for completion falls between the expiration of the period for which the last rate was made and the making of a new rate, the new rate shall, for the purposes of this condition, be deemed to have been made at the same rate in the pound as that at which the last rate was made, and shall be calculated from day to day.

(*m*) These conditions will apply to contracts for the sale of land by correspondence, subject to any modification or any stipulation or intention to the contrary expressed in the correspondence.

They may also by express reference thereto be made to apply to any contract for the sale of land, and may for this or any other purpose be cited as the Statutory Form of Conditions of Sale, 1925.

Interest on purchase-money.

4.—(1) If from any cause whatever (save as hereinafter mentioned), the completion of the purchase is delayed beyond the date fixed for completion, the purchase-money, or where a deposit is paid, the balance thereof, shall bear interest at the rate of £5 per cent. per annum, from the date fixed for the completion to the day of actual payment thereof.

(2) Provided that, if delay in completion arises from any other cause than the purchaser's own act or default the purchaser may—

(a) at his own risk, deposit the purchase-money, or where a deposit is made, the balance thereof, at any bank in England or Wales, in his own name or otherwise, and

(b) give notice in writing forthwith of such deposit to the vendor or his solicitors,

and in that case the vendor shall be bound to accept the interest, if any, allowed thereon, as from the date of such deposit, in lieu of the interest accruing after the date of the deposit, which would otherwise be payable to him under this condition.

(3) No interest shall become payable by the purchaser if delay in completion is attributable to—

(a) a refusal by the vendor to deduce title in accordance with the contract, or to give an authority to inspect the register kept under the Land Registration Act, 1925, or to convey; or

(b) any other wilful act or default of the vendor or his Settled Land Act trustees.

(4) The vendor shall, as from the date when interest becomes payable under this condition, have the option (to be exercised by notice in writing) of taking an apportioned part of the rents and profits, less apportioned outgoings, up to the date of actual completion, in lieu of the interest otherwise payable under this condition; and, if the said option is exercised, the same payments, allowances and apportionments shall be made as if the date fixed for completion had been the date of actual completion.

The said option shall not be exercisable in any case in which sub-clause (2) of this clause applies.

Delivery of abstract.

5.—(1) The vendor shall deliver to the purchaser or his solicitor—

(a) an abstract of the title to the property sold, or

(b) in the case of land registered with an absolute or good leasehold title, the particulars and information which

ought to be furnished in lieu of an abstract, with a written authority to inspect the register,

and, in either case, within fourteen days from the date when the contract was made.

(2) Where land is registered with a possessory or qualified title, the abstract (if any) shall only relate to estates, rights, and interests, subsisting or capable or taking effect prior to the date of first registration, or excluded from the effect of first registration, and dealings therewith, and subject as aforesaid, the foregoing provisions relating to absolute or good leasehold titles, shall apply.

Requisitions.

6.—(1) The purchaser shall within fourteen days after the actual delivery of the abstract, or of the said particulars and information, whether or not delivered within the time prescribed, send to the solicitors of the vendor a statement in writing of all the objections and requisitions (if any) to or on—

(a) the title or evidence of title,

(b) the abstract or the said particulars and information,

(c) the contract, as respects matters not thereby specifically provided for,

and subject thereto the title shall be deemed accepted.

(2) All objections and requisitions not included in any statement sent within the time aforesaid, and not going to the root of the title, shall be deemed waived.

(3) An abstract or the said particulars and information though in fact imperfect, shall be deemed perfect, except for the purpose of any objections or requisitions, which could not have been taken or made on the information therein contained.

(4) An answer to any objection or requisition shall be replied to, in writing, within seven days after delivery thereof and, if not so replied to, shall be considered satisfactory.

Power to rescind.

7.—(1) If the purchaser shall take or make any objection or requisition, which the vendor is unable to remove or comply with, and the purchaser shall not withdraw such objection or requisition within ten days after being required, in writing, so to do, the vendor may, by notice in writing delivered to the purchaser or his solicitor and notwithstanding any intermediate negotiations, rescind the contract.

(2) This condition does not apply so as to prevent the enforcement by a purchaser, of any right conferred on him, by section forty-two of the Law of Property Act, 1925.

(3) If the contract is so rescinded the vendor shall, within one week after default is made in complying with the requirement to withdraw the objection or requisition, repay to the purchaser his deposit money (if any), but without interest, and the purchaser shall return forthwith all abstracts and papers in his possession, belonging to the vendor, and shall not make any claim on the vendor for costs, compensation or otherwise.

Preparation of conveyance.

8.—(1) The conveyance or instrument of transfer to the purchaser shall be prepared by him and at his own expense, and the draft thereof shall be delivered at the office of the solicitors of the vendor at least ten days before the date fixed for completion, for perusal and approval on behalf of the vendor and other necessary parties (if any).

(2) The engrossment of such conveyance or transfer, for execution by the vendor and other necessary parties (if any), shall be left at the said office within four days after the draft has been returned approved on behalf of the vendor and other necessary conveying parties (if any).

(3) Delivery of a draft or of an engrossment shall not prejudice any outstanding requisition.

Power for vendor to resell after notice.

9.—(1) If the purchaser shall neglect or fail to perform his part of the contract the vendor may give to the purchaser or to his solicitor at least twenty-one days' notice in writing specifying the breach and requiring the purchaser to make good the default before the expiration of the notice.

(2) If the purchaser does not comply with the terms of the said notice—

(a) the deposit money, if any, shall, unless the Court otherwise directs, be forfeited to the vendor, or, in the case of settled land, to his Settled Land Act trustees;

(b) the vendor may resell the property without previously tendering a conveyance or instrument of transfer to the purchaser;

and the following provisions shall apply.

(3) Any resale may be made, by auction or private contract, at such time, subject to such conditions, and in such manner generally, as the vendor may think proper, and the defaulting purchaser shall have no right to any part of the purchase-money thereby arising.

SPECIAL CONDITIONS OF SALE.

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I. Biddings and Mode of Sale.

First bidding.

1. Each lot shall be put up at a sum to be fixed by the auctioneer at the time of sale.

Advances in bidding.

2. No person shall advance a less sum at each bidding than shall be named by the auctioneer at the time of putting up each lot, or retract any bidding.

3. No person shall advance less than £—— at any bidding, or retract any bidding.

4. No person shall advance less than 20*l.* at any bidding, on lots —, —; 10*l.* on lots —, —; 5*l.* on lots —, —, —; and 2*l.* on each of the other lots; or retract any bidding.

Mode of selling to be fixed at the time of sale.

5. The estate will be first offered in one lot, and if not so sold, then in the lots mentioned in the particulars, or in such other lots as may be determined on at the time of sale, and subject to such conditions as may be then produced. The auctioneer shall declare the mode of bidding immediately before the sale. The vendor, his solicitor or agent, shall be allowed to bid [once], and the highest bidder shall be the purchaser; no bidding shall be retracted; and

I. BIDDINGS AND MODE OF SALE.

if any dispute arise respecting any bidding, the lot shall be put up again at the last undisputed bidding.

Reserved bidding.

6. The property is offered for sale subject to a reserve price; the vendor reserves the right of bidding himself or by his agents, as often as he or they shall think proper.

Sale without reserve.

7. The property is offered for sale without reserve.

Right to re-arrange and withdraw lots and to refuse biddings.

8. The vendor reserves to himself the right to consolidate two or more lots into one lot, and to divide any lot into separate lots.

9. The vendors reserve the right either before or at the auction to put any two or more lots together, or to subdivide any lot or lots, and also to vary the arrangement of the lots, or any of them, and also to withdraw from the sale any lot or lots, without declaring the reserve price, and to refuse any bidding. No representation at or before the time of sale shall be binding on the vendors unless reduced into writing, and any addition to these conditions or to the particulars, or any alteration therein, if made in writing, but not otherwise, shall be obligatory as conditions of sale.

Right to make alterations in sale plan.

10. The vendor reserves the right, in case any of the lots shall be withdrawn, or shall remain unsold at the present sale, to make any alterations he shall think advisable in the intended arrangements for laying out the property offered for sale, and for making roads and other works thereon, indicated by the sale plan annexed to the particulars, and reserves the right to hold any unsold lot free from any restriction or stipulation in relation to any lot sold or otherwise subject to such restrictions and stipulations (if any) as he may think fit.

II. Expenses of Sale—Completion—Delivery of Possession and Payment of Outgoings.

Purchaser to discharge claims of outgoing tenants.

1. The purchaser of each lot shall be entitled to the possession of the lot purchased by him from the said —— day of —— next, and shall at his own expense ascertain, pay, and discharge all moneys and payments to which the tenants under the now existing tenancies of the property will become entitled in respect of such lot as outgoing tenants on the expiration of their tenancy, all other outgoings up to the said —— day of —— being cleared by the vendor, and such other outgoings shall for the purpose of this condition be apportioned.

II. EXPENSES OF SALE, COMPLETION, &c.

Purchaser to pay expenses of sale.

2. [Except any expense which by sects. 42 and 125 of the Law of Property Act, 1925, or by any other statute is not payable by the purchaser] (*o*). All expenses of and incidental to the investigation, verification, or completion of the abstract, or the title or the preparation, perusal, and execution of the conveyance, and any other deeds and all other costs and charges relating to the sale, shall be borne by the purchaser.

Possession given before completion.

3. On signing the subjoined agreement and paying the deposit and all outgoings, the purchaser shall be let into possession of the property, and shall pay interest on the balance of the purchase-money at the rate of 4 per cent. per annum until the —— day of —— next, and at the rate of 5 per cent. per annum from that day until actual completion if the purchase is not then completed. The purchaser shall not be deemed to have accepted the title by reason of such possession, and no alteration shall be made in the property by the purchaser prior to completion. If the sale is annulled the purchaser shall pay interest at the rate aforesaid to the date of such annulment, and shall give up possession to the vendor, and pay for dilapidations (if any), reasonable wear excepted, and shall have no claim against the vendor for expenditure on the property.

Delivery of possession to purchaser before completion (*p*).

4. The vendors will permit the purchaser of the property, without prejudice to any question on the title, to take possession of such portion of the property as may be unoccupied, for the purpose of cultivating it in a proper and husbandlike manner, upon the balance of the purchase-money being deposited in Messrs. —— & Co.'s Bank in the joint names of the vendors and the purchaser, to await the completion of the purchase, or the vendors will, at the request and expense of the purchaser, do such things as may

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(*o*) The words in brackets may be useful as a reminder.

(*p*) Entry into possession before conveyance generally amounts to a waiver of all objections to title (*Fludyer* v. *Cocker,* 12 Ves. 25) unless under special circumstances, as when the purchaser takes possession at the instance of the vendor representing the title to be perfect (*Vancouver* v. *Bliss,* 11 Ves. 458), or if the contract authorises the purchaser to take immediate possession: *Stevens* v. *Guppy,* 3 Russ. 171.

As to the effect of entry on the purchaser's right to receive and retain the rents and profits, and his liability to pay interest on unpaid purchase-money, see K. & Elph., 12th ed., vol. i., I. "Contracts for Sale of Freeholds" (note to Form 4).

be necessary for the due cultivation of the land. But in default of such entry or request the vendors shall not be bound to see to the management or cultivation of the property (*q*).

II. EXPENSES OF SALE, COMPLETION, &C.

III. Abstract (*r*).

1. The vendor will furnish an abstract of the lease, dated the —— day of ——, under which the property is held, and of an assignment thereof, dated the —— day of ——, and the subsequent title, and the purchaser shall assume without question the validity of the lease, and shall make no objection or requisition in respect of the intermediate title between the lease and the said assignment, notwithstanding any reference to such title in the assignment or any subsequent document, but shall assume that the assignment effectually vested the property in the assignee with a good title for the residue of the term.

Title commencing with old lease (*s*).

2. The vendor will furnish an abstract consisting of the lease, dated the —— day of ——, under which the property is held, and an assignment thereof to the vendor, dated the —— day of ——. No further abstract will be furnished, and no objection or requisition or inquiry shall be made in respect of the intermediate title.

Title to mesne assignments not to be required.

3. No purchaser whose purchase-money does not exceed 300*l*. shall, except upon the terms hereinafter mentioned, be entitled to delivery of an abstract of title, but an abstract prepared according to these conditions will, during fourteen days after the sale, be deposited at the office of Messrs. —— & Co., No. —, Lincoln's Inn Fields aforesaid, during business hours, and the same may be examined, and extracts may be taken therefrom by the respective purchasers or their solicitors; Provided that any such purchaser as aforesaid, on giving notice in writing to Messrs. —— & Co., requesting that an abstract may be delivered to him, and also on paying to them the cost of such abstract within four days after

Small purchasers not entitled to delivery of abstract.

(*q*) This may easily be adapted to the sale of business premises.

(*r*) Lord St. Leonards says that a purchaser may insist upon an abstract, and is not bound to wade through the deeds: Sugd. Vend. 406.

Purchaser entitled to an abstract.

(*s*) Where there is no condition protecting the vendor from producing deeds he is bound to produce the lease which is the root of his title, but no other document prior to the commencement of title: see *Frend* v. *Buckley*, L. R. 5 Q. B. 213.

III. DELIVERY OF ABSTRACT.

the sale, shall be entitled to have delivered to him an abstract prepared in accordance with these conditions. In case no abstract is required he shall be bound in the same way as if an abstract prepared according to these conditions had been actually delivered to him.

IV. Commencement of Title (*t*).

General form.

1. The title shall commence with an indenture dated the —— day of ——, 19—, being a conveyance by way of sale [*or* a mortgage, *or* the lease, *or* the underlease under which the vendor holds the property (*u*)].

Admission to copyholds or surrender.

2. The title [of the former copyhold interest] shall commence with an admission of [A. B.], dated the —— day of —— [*or*, "with a surrender on sale," *or* "with a surrender to the uses of a will," *or* "with a conditional surrender," dated, &c.].

Admission and enfranchisement (*x*).

3. The property offered for sale was formerly copyhold of the manor of ——. The copyhold title shall commence with an admission of [A. B.], dated the —— day of ——, and the freehold title shall commence with a deed of enfranchisement dated the —— day of ——.

Allotment under an inclosure award (*y*).

4. The title to the allotments numbered —— and —— on the sale plan, shall commence with an award under the Act of Parliament for the inclosure of ——; the validity and regularity of the award shall be assumed, and the title to the hereditaments in respect of which it was made shall not be called for or investigated, nor shall any requisition or objection be made or taken in respect thereof; and it shall be assumed that by the award the fee

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(*t*) See L. P. A. 1925, s. 44 (1).

(*u*) As to the necessity for accurate description of the deed forming the commencement of the title, see *ante*, p. 230, note (*x*).

(*x*) The purchaser is not entitled to require production of the title to make the enfranchisement: see L. P. A. 1925, s. 44 (6).

Inclosure award binding on all persons.

(*y*) As to the allotment made by an inclosure award being "binding and conclusive on all persons whatsoever," see sect. 105 of the Inclosure Act, 1845, and *Blackett* v. *Ridout*, [1915] 2 K. B. 415. As to minerals, see *St. Catherine's College* v. *Rosse*, [1916] 1 Ch. 73, following *St. Catherine's College* v. *Greensmith*, [1912] 2 Ch. 280. The allotment award map is not conclusive as to boundaries: *Collis* v. *Amphlett*, [1918] 1 Ch. 232, and [1920] A. C. 271 (reversing the judgments of the C. A. upon facts).

simple became vested in the allottee named in the award, subject only to the reservations and matters therein mentioned.

IV. COMMENCEMENT OF TITLE.

5. The title shall commence with a general devise of real estate contained in the will of a testator who died in the year ——, and the purchaser shall assume the testator's seisin or ownership, and that the property passed under the devise.

Title commencing with a will.

6. The title shall commence with an appointment by deed, dated, &c., under a power contained in an indenture, dated, &c., and the prior title shall not be investigated, nor shall any requisition or objection be made with respect thereto.

Title commencing with an appointment.

7. In order to save trouble and expense to the vendor, the title shall commence with a recent conveyance on sale, dated the —— day of ——, but the purchaser, by giving a written notice to the vendor, or his solicitor, within —— days after the delivery of the abstract of such title, may require the earlier title, commencing with, &c., to be abstracted and deduced at the purchaser's expense (*z*).

Short title with liberty to purchaser to call for earlier title at his own expense.

8. The title shall commence, &c. An abstract of the earlier title deeds in the vendor's possession may be seen at the office of his solicitor at any time prior to the sale, but after the sale no investigation of such earlier title shall be permitted, nor shall any objection or requisition be made in respect thereof.

Inspection of title before sale.

9. The title to the property was fully investigated when it was purchased in the year —— by the late owner [*or*, by the vendor]. In order, therefore, to save the trouble and expense of another investigation of the title prior to that date, it is stipulated that the title shall commence with the conveyance dated the —— day of —— to the late owner [vendor], but the earlier title, commencing with, &c., will be abstracted and deduced, if required, at the purchaser's expense, upon his giving a notice in writing requiring the same within —— days after delivery of the abstract of the later title (*z*).

Short title on ground of recent investigation.

10. As to certain small portions of the property, containing —— acres or thereabouts [*or*, as to lot —], the purchaser shall be content with such title as the vendors have.

Such title as the vendors have (*a*).

(*z*) If this condition is used insert any special conditions that may be required as to the earlier title.

(*a*) This condition is only applicable to the sale of a lot or property of small value, and ought not to be used except in case of absolute necessity, as it is calculated to prejudice the sale.

IV. COMMENCEMENT OF TITLE.

11. The title shall commence with an indenture of assignment dated the —— day of ——, and the purchaser shall not be entitled to require the production of the original lease; and no evidence shall be required that the persons now in receipt of the rents payable thereunder are entitled to receive it.

Leaseholds: production of original lease and title to receive rent not to be required.

12. The title shall commence with an indenture dated the —— day of ——, purporting to be a conveyance of an undivided moiety of certain hereditaments, of which the land now offered for sale formed part, to [A. B.], who is therein stated to have been, and he shall accordingly be taken to have been, seised of the remaining moiety thereof in his own right, and the vendor shall not be required to furnish any previous or other title to such remaining moiety.

Moiety purchased by owner of other moiety (*b*).

Settlement.

13. The title shall commence with an indenture of settlement dated the —— day of ——, purporting to be a settlement of the property offered for sale (with other property). The purchaser shall not require any evidence, information, or explanation of the right of the settlor to make such a settlement, except a declaration by Mr. ——, who has for many years past acted as solicitor to the family of the vendor, that the property has, ever since the date of the settlement, been possessed and enjoyed consistently with the uses and trusts thereof.

Short title; no earlier title to be shown.

14. The property forms a portion of the —— estate, which was for many years the seat of the late Sir [A. B.]. The title to the estate is well known in the neighbourhood (*c*), and was carefully examined when the vendor's predecessors acquired the property, and accordingly it is now stipulated that the title shall commence with an indenture, dated the —— day of ——, 19—, and made between [F. B.], Esquire (grandson of Sir [A. B.]), of the one part, and [C. D.], and [E. F.], of the other part. No earlier title shall be required.

Surplus lands of railway company (*d*).

15. Inasmuch as the property offered for sale forms part of lands conveyed to the —— Railway Company by an indenture,

(*b*) After December 31st, 1925, a legal estate is not capable of subsisting or being created as an undivided share in land: L. P. A. 1925, s. 1 (6).

(*c*) This statement should not be made unless it is capable of being substantiated.

(*d*) This condition will debar the purchaser from disputing the vendor's title, even though it should appear that the company had not made an

dated the —— day of ——, 19—, the title shall commence with that conveyance, and the purchaser shall not be entitled to call for or require evidence of any of the recitals or statements contained in the said conveyance, but shall admit that everything (if anything was necessary) has been done and performed by the company to enable them to sell and effectually convey the said property now offered for sale as surplus lands, and shall not call for or require production of any evidence to this effect, or of the identity of the land with that described in the conveyance. IV. COMMENCEMENT OF TITLE.

16. The title shall commence with a voluntary conveyance, or deed of gift of the property, dated the —— day of ——; the purchaser shall accept such title as passed to the grantee thereunder, and shall not require any evidence that the grantor was solvent at the date thereof, but shall assume that the said conveyance was valid, and effectual in all respects (*e*). Voluntary conveyance.

17. The piece of land, No. —, in lot —, was formerly copyhold, and the title thereto shall commence with a grant to the late [A. B.], of —— acres of land from the lord of the manor of ——, to hold according to the custom, by copy of court roll; and no objection shall be made by reason of any variation in the quantity, or on the ground that the land granted was not expressed to be parcel of the waste; nor shall any evidence be required that the land was parcel of the waste, or that the lord was authorised by the custom to grant such land by copy (*f*). Waste of manor.

V. Title—Evidence of Title, &c.

1. The purchaser shall not require any evidence of any matter or thing admitted or proved, or found in any action in the High Court of Justice, and shall assume that all proper persons were parties to such action, and that all decrees, orders, and proceed- Action.

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offer of the lands to adjoining owners, as required by sect. 128 of the Lands Clauses Consolidation Act, 1845, and that such adjoining owners had not waived their right of pre-emption: *Best* v. *Hamand*, 12 Ch. D. 1.

(*e*) See also conditions as to voluntary conveyances, *post*, pp. 272 and 273.

(*f*) The state of the title under such grants occasionally requires such a condition; and it is to be remembered, that a defective title to a small part of the estate may entitle the purchaser to rescind the contract as to the whole, if he can show that the part of which the title is defective is material to the enjoyment of the rest; as where it is a paddock or stables, a private road, &c.

V. TITLE—EVIDENCE OF TITLE, &c.

ings therein were made and had in the presence of all proper persons, and are valid and binding in all respects.

Allotments (*g*).

2. All allotments made more than —— years before the day of sale under any Enclosure Act or award shall, unless the contrary appears, be deemed duly made in respect of the title under which the lands taken on allotment appear by the abstract or otherwise to have been since held, and no requisition or objection is to be made in respect of any such allotment or in respect of the title to the land in respect whereof the allotment was made.

Annuity bond not to be produced.

3. The said [W. B.] sold and assigned to the said [J. B.] all the share of the said [W. B.] in the premises, in consideration of an annuity secured by a bond. The purchaser of lot 1 shall not call for the production of any abstract of or evidence as to the said bond, and shall assume that the said [W. B.] was the same person as [W. B.], the annuitant, whose death is recited in an abstracted deed.

Building society; due appointment of trustees.

4. In the year —— a mortgage was made to three persons who purported to be the trustees of a building society, and a receipt for the money secured appears to be endorsed on the mortgage deed and signed by them as such trustees; it shall be assumed that the persons so signing were then the duly appointed trustees of the society, and accordingly that the receipt operated as a complete release and re-assignment of the mortgaged property, and no requisition, inquiry, or objection shall be made or taken as to the appointment of the trustees or the constitution of the society.

Building society constitution, &c.

4a. The purchaser shall assume that every building society mentioned in the abstract was and is duly constituted, and no evidence shall be required of the rules, constitution, or incorporation of such society, or of the appointment of any trustees, directors, or officers thereof, and the purchaser shall assume that the receipt given on the redemption of any mortgage to any such society or the trustees thereof was duly sealed, and signed or countersigned by the proper persons, and is valid in all respects.

Constitution and powers of industrial company.

5. No requisition or objection shall be made or taken as to the constitution or powers of the —— Land Company, Limited, but each purchaser shall assume that the said company had power to acquire and dispose of the property conveyed by them.

(*g*) See *ante*, p. 258, note (*y*).

Constitution and rules of friendly society.

6. The ordinary prints of the rules and orders of the said —— Society contained in their annual reports shall be accepted as conclusive evidence of such rules and orders, and a copy certified by a person describing himself as the secretary of the society to be a true copy of any resolution stated to have been passed at any meeting either of the society or of its standing committees, shall be accepted as conclusive evidence of the passing and contents of such resolution, and of its validity, and no purchaser shall be entitled to production of any of the rules, orders, minutes, or books or records of the society, or to any covenant, acknowledgment, or undertaking in relation thereto.

Sale of land comprised in a floating charge by a company.

6a. The vendor company have issued debentures creating a floating charge on the property, but the debenture interest has been paid regularly, no part of the principal money has become due, no winding-up proceedings have commenced, and the purchaser shall accept a written statement by the secretary to that effect as conclusive proof of the facts in this condition stated. The purchaser shall not require the concurrence of the debenture holders or their trustees in the conveyance, or make any objection or requisition in respect of the said debentures (*h*).

Crown grant.

7. The purchaser of lot ——, which is held under an old grant from the Crown, shall not require any copy or abstract of such grant, nor any evidence of such grant, except the recital thereof in the modern documents; nor shall he require any deduction of the intermediate title, except for the last —— years; nor any evidence of the identity of the lands included in such lot with the lands included in the said grant.

Death of annuitant.

8. No purchaser shall require any evidence of the death of [*annuitant*], an annuitant under the will of [*testator*], who, in a memorandum indorsed on a deed dated in 19—, is stated to have died in France.

Deed missing to be evidenced by attested copy.

9. It is apprehended that an indenture dated the —— day of ——, ——, being a settlement of the property offered for sale (with other property), was accidentally destroyed by fire in the year ——; the purchaser shall be satisfied with the production of

(*h*) If the land is registered in a compulsory district, see L. R. A. 1925, s. 60, providing that where land is registered by a company as proprietor, mortgages and charges thereon must be registered or protected, by caution or otherwise, under the Act.

V. TITLE—EVIDENCE OF TITLE, &c.

an attested copy of the said indenture as sufficient evidence of the contents and due execution of the original.

Deed missing to be evidenced by recitals in subsequent deed.

10. As to lot 1, a conveyance thereof, believed to have been made in the year ——, is not in the vendor's possession, and it is not known in whose custody the same now is, or whether it is in existence. No abstract or copy of such conveyance shall be called for, but a recital thereof contained in a subsequent conveyance of the property by way of mortgage, dated the —— day of ——, 19— (which mortgage has since been paid off, and the property reconveyed), shall be taken to be conclusive evidence of the material contents and due execution of the missing deed, and no objection or requisition shall be made in respect of the non-production or non-existence thereof.

Deeds not in vendor's possession not to be required.

11. The vendor shall not be required to produce any deed or document not in his possession, or to procure any copy or abstract thereof, or any covenant, acknowledgment, or undertaking in respect thereof, or to give any information or explanation as to the custody thereof, or otherwise in relation thereto; and if the vendor shall produce any copy or abstract of any deed or document not in his possession, such copy or abstract shall be accepted without verification as sufficient evidence of the contents and due execution of such deed or document.

Exchange.

12. The vendor shall not be required to produce, for any purpose, any evidence or documents of title to the lands which have been taken in exchange [upwards of —— years ago], anterior to the deeds by which such exchanges have been effected, nor to deduce the title to the lands given in exchange.

Land tax, redemption of.

13. No evidence shall be required of the redemption of the land tax, except a certificate or declaration of the collector of land tax or of the vendor's steward or agent, to be made, if required, at the purchaser's expense, that [with the exceptions noted in the particulars] the property is not now assessed for land tax, and that no land tax has been paid in respect thereof for the last ten years.

Land tax, redemption of.

14. No evidence shall be required of the freedom from land tax of any part of the property, except a certificate of redemption, dated in 1799, and a statutory declaration made in the year 18— by a former owner of the property, that he had not paid or been called upon to pay land tax; but the vendors shall not be required to identify the property described in the particulars with that described in the certificate.

15. The property being held under a lease at a nominal rent, the mere fact of possession shall be taken as sufficient evidence of the performance and observance of all the lessee's covenants.

Leaseholds; observance of covenants where rent nominal.

16. As respects lot 5, the production of the receipt for the rent which last accrued due under the lease of the —— day of ——, or satisfactory evidence of the payment of such rent, shall be accepted as conclusive evidence, and as respects the remainder of the property, the lease whereof is at a peppercorn rent, it shall be assumed, without evidence, that all the covenants and conditions of such leases have been fulfilled, or that all breaches (if any) of such covenants and conditions, or any of them (whether appearing by the abstract or otherwise or not), have been effectually waived down to the time of completion of the purchase, and that the said leases are then valid and subsisting; and as respects the rent reserved on the lease of lot 5, no evidence shall be required of the fact that the parties giving such receipts or receiving such rent were entitled so to do.

Leaseholds; observance of covenants, and title to receive rent.

Leaseholds renewable.

17. The title shall commence with a lease dated the —— day of ——, under which the vendor holds and of which the vendor shall furnish an abstract. The lease was granted upon the occasion of the surrender of a former lease; but, inasmuch as the landlord on the occasion of each renewal requires the surrendered lease to be given up to him, the purchaser shall not, except as hereinafter mentioned, call for the production of, or investigate, or make any objection or requisition in respect of the surrendered lease; and the production of a receipt for the last payment of rent, accrued previously to the completion of the purchase, shall be conclusive evidence that all the covenants and conditions in the lease have been performed and observed up to the completion of the purchase. Under sect. 145 and the 15th Schedule of the Law of Property Act, 1922, this lease has been converted into a lease for 2,000 years from the renewal in the year ——. [The additional rent in respect of fines has not been agreed on, but the vendor estimates that it will be £—— per annum] *or* [the purchaser shall not require proof that the person entering into the agreement dated ——, 1926, for the conversion of renewal fines into additional rent was entitled as lessor to enter into that agreement]. A copy or abstract of the existing lease will be produced at the sale, and the purchaser shall be deemed to have notice of all the contents of the lease.

V. TITLE—EVIDENCE OF TITLE, &c.

Leases to be presumed to have determined.

18. Certain leases and agreements mentioned in deeds dated in and prior to the year 18— shall be presumed to have determined, and no requisition, objection, or inquiry shall be made in respect thereof.

Leaseholds for lives (*i*).

19. The statement in the particulars of the ages of the several persons for whose lives the property is now held on lease, is taken from a statement of such ages contained in the subsisting lease of the property, and the purchasers shall not require any evidence of the ages of such persons, other than the statement in the said lease.

Legacies; declaration as to payment.

20. A statutory declaration, which was made on the occasion of a conveyance by way of mortgage of the property in 18—, that all legacies given by the will of [A. B.] had been paid, shall be accepted as conclusive evidence of that fact.

Legacies and annuities, no evidence as to payment.

21. The purchaser shall not require any evidence that the legacies and annuities given by the will of [A. B.], who died in the year ——, have been paid or have ceased.

Legacies and arrears of annuity presumed to be paid.

22. No evidence shall be required of the payment or other discharge of any legacy or sum of money charged by any will which became payable more than —— years since, nor of the payment of arrears of life annuities which have ceased or expired more than —— years ago (*k*).

Mortgage, satisfaction of.

23. As to lot —, the purchaser shall not require any other evidence of the satisfaction of a mortgage, dated in 18—, than the production of the mortgage deed from the vendor's possession, and the vendor's statutory declaration that no payment or demand of payment of interest or principal has been made during the last —— years; and the purchaser shall assume without question that the legal estate has been duly reconveyed, and is now vested in the vendor.

(*i*) As to leases for lives, see L. P. A. 1925, s. 149; and *ante*, p. 212, note (*b*).

(*k*) It is not sufficient to show that an annuity has ceased; it must also be shown that no arrears remain unpaid: see *Wynn* v. *Williams*, 5 Ves. 130. An annuity charged on land is within the 42nd section of the Statute of Limitations (3 & 4 Will. 4, c. 27), and consequently arrears are generally recoverable for six years only; but even if the annuity has ceased for that period it may be advisable to insert this provision to meet the possible chance of a subsequent acknowledgment in writing in respect of the arrears.

V. TITLE—EVIDENCE OF TITLE, &C.

24. The vendor shall not be required to produce any evidence of title to lot —, other than an indenture of mortgage, dated the —— day of ——, 18—, and a statutory declaration by the vendor, that he has been in possession for a period of twelve years and upwards, without having received interest, or given to any person any acknowledgment of the title of the mortgagor or of his right or equity of redemption. Mortgagee's title under Statute of Limitations.

[25. The purchaser shall assume that all notices have been duly given, and shall not make any requisition, objection, or inquiry in respect to any such notice (*l*)]. Notices under Settled Land Acts.

26. An abstract, dated in the year 18—, shall be accepted as sufficient evidence of the contents and due execution and attestation of two deeds therein abstracted, and stated to bear date, &c. respectively, such deeds being recited or referred to in a purchase deed, dated, &c., which will be produced. Old abstract to be evidence.

27. The purchaser shall not require any evidence of the birth or death of any person, or of any fact or matter relating to the pedigree of the vendor, other than the statutory declaration of ——, who is related to the family. Pedigree.

28. Upon the request of any purchaser the vendors will apply for a certificate of discharge of the estate duty payable on the death of a late owner, who died in the year 19—, and will produce such certificate, when obtained, to such purchaser; but in case such certificate shall not be obtained before the date fixed for completion, the purchase shall not be delayed, nor shall any objection be raised on that ground; and any purchaser who shall not make such request as aforesaid before that date shall be taken to have waived Payment of estate duty (*m*).

(*l*) This may be omitted except in a sale of leaseholds, where notice has to be given to the landlord.

(*m*) See sect. 11 of the Finance Act, 1894. Charges for death duties attached to a legal estate before January 1st, 1926, will not take effect as against a purchaser for money or money's worth unless he has notice of the facts giving rise to the charge: L. P. A. 1925, s. 17 (1).

Charges for these duties attaching after December 31st, 1925, will not take effect against a purchaser for money or money's worth unless they are registered: see L. C. A. 1925, s. 10.

In regard to charges attaching after December 31st, 1925, on registered land, purchasers by registered disposition will take free therefrom, even if a notice of the charge has been entered on the register: see L. R. A. 1925, s. 73.

V. TITLE—EVIDENCE OF TITLE, &c.

the production of such certificate. If any further estate duty shall become payable the vendors will duly pay the same. The production of a certificate of discharge including any lot shall be accepted by the purchaser of such lot without requiring a separate certificate relating to such lot.

Estate duty on timber, &c. and succession duty (*n*).

29. The purchaser shall not require the estate duty or succession duty (if any) payable upon the occasion of the present sale in respect of the timber, trees, and wood growing upon the property now offered for sale [and other property] at the time of the death of the late owner, Mr. ——, to be discharged prior to completion, but shall be satisfied with the covenant of the vendor to indemnify the purchaser and the purchased property against the same.

Presumption of death (*o*).

30. It shall be assumed upon the evidence afforded by a statutory declaration, to be made by a disinterested person, that [A. B.], who left England in or about the year ——, and has not since been heard of, is dead.

Payment of death duties (*p*).

31. It shall be assumed, without requisition or inquiry, that all duties payable on the death of any person dying more than —— years before the date of the sale have been paid.

Policy of insurance on life of assured.

32. The age of the assured was admitted on the policy, and such admission shall be deemed to be sufficient evidence that he was, at the date of the policy, of the age therein mentioned. No

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(*n*) See Finance (1909-10) Act, 1910, s. 61 (5); Finance Act, 1911, s. 19; and Finance Act, 1912, s. 9; *Re Smyth*, [1918] 1 Ch. 118; 87 L. J. Ch. 40.

(*o*) As to presumption of death, see *Re Phené*, L. R. 5 Ch. 139; *Re Benjamin*, [1902] 1 Ch. 723; *Re Aldersey*, [1905] 2 Ch. 181; and *Re Jackson*, [1907] 2 Ch. 354. See also sect. 184 of the L. P. A. 1925, as to the presumption of survivorship in the case of two people dying in uncertain circumstances of survival.

(*p*) See, as to succession duty, the Customs, &c. Act, 1889, ss. 12—15; Finance (1909-10) Act, 1910, s. 58; and as to estate duty, Finance Act, 1894, s. 8 (2); Finance Act, 1896, ss. 17, 18; Finance Act, 1900, ss. 11—14; Finance Act, 1907, s. 12; and Finance (1909-10) Act, 1910, ss. 54 *et seq.*; and see Finance Act, 1914, ss. 12—15, and note (*m*), *ante*, p. 267. By sect. 205 of the L. P. A. 1925, "death duty" means estate duty, succession duty, legacy duty, and every other duty leviable or payable on a death.

As to the duties payable on the death of persons killed in the war, see Finance Act, 1900, s. 14; Death Duties (Killed in War) Act, 1914; and Finance (No. 2) Act, 1915, s. 46.

further evidence of the validity of the policy and of the accuracy of the statements upon which it was granted shall be required than the production of the receipt for the premium last due.

Policy on the life of a third person (*q*).

33. No further evidence of the validity of the policy comprised in lot — shall be required than the statutory declaration of Mr. ——, on whose life the policy was effected, that when the policy was effected he was in a good state of health and of the age mentioned in the policy, and the production of the receipt for the last premium, and the statutory declaration of Mr. ——, that when the policy was effected he had an insurable interest in the life mentioned in the policy to the amount of ——. Any statutory declaration under this condition shall be made at the expense of the purchaser requiring the same.

Possessory title.

34. As to lot 2, the purchaser shall not require any evidence, information or explanation of the title of the vendor other than a statutory declaration, to be made by an old inhabitant of the parish of ——, to the effect that the last-mentioned lot has been for at least —— years in the undisturbed possession of [*testator*], and of the persons claiming under his will, and also a counterpart of a lease of the same lot granted by the said [*testator*] in the year 18—.

Possessory title.

35. As to lots — and —, the title shall commence with evidence of the possession in the year ——, of the party under whom the vendor claims, and the purchaser shall not investigate or object to the earlier title.

Sale by mortgagee by sub-demise (*r*).

36. The vendor is selling as mortgagee under a mortgage by way of sub-demise for the whole of the term granted by an indenture of lease, less —— days, of part only of the property comprised in the superior lease. The mortgage deed contains no

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(*q*) See, as to insurance by one person on the life of another, stat. 14 Geo. 3, c. 48, s. 1; *ante*, p. 243, note (*d*).

Mortgage by sub-demise prior to registration under L. T. Acts.

(*r*) This condition will be required where the mortgagee is selling his sub-term only and is unable to convey or vest the leasehold reversion: L. P. A. 1925, s. 42 (5); and see sects. 104 and 89 (6).

Sale by equitable mortgagor.

A memorandum accompanying a deposit of title deeds and conferring a power of sale is equitable only, and operates only in equity: L. P. A. 1925, s. 1 (7) and (8). Unless the mortgagee is also entitled to call for a legal mortgage by the terms of the memorandum, the mortgagee by deposit must apply to the Court for an order for sale: see L. P. A. 1925, s. 90.

V. TITLE—EVIDENCE OF TITLE, &c.

power of attorney to enable the vendor to assign the reversion expectant upon the mortgage sub-term, and the purchaser shall make no objection or requisition on account of the inability of the vendor to assign such reversion; and the mere fact of possession by the mortgagor or his tenants shall be taken as sufficient evidence of the performance and observance of all the lessee's covenants and conditions in the said lease up to completion of the purchase.

Satisfied terms (*s*).

37. The vendor shall not [save at the purchaser's expense] be required to furnish any evidence or information as to the creation of or to trace the title to any term which has been assigned to attend the inheritance.

Proceedings in action.

38. The vendors shall not be required to produce or to furnish any abstract, copy, or evidence of the proceedings in the above-mentioned action, except an abstract of the order under which the sale is made; nor shall they be bound to enrol the said order or any of the proceedings. Nor shall the purchaser make any inquiry or objection as to the parties to the suit, or the regularity of the proceedings.

Possibility of issue.

39. The purchaser shall not object to the title of part of lot —, on account of the possibility of a lady, aged fifty-two years and unmarried, marrying and having issue (*t*).

Power of attorney (*u*).

40. Any surrender of or admittance to the property made pursuant to power of attorney shall be assumed to have been duly authorised by the power under which it appears on the court rolls to have been made, and production of the power shall not be required.

Power of attorney.

41. Where any deeds shall purport to have been executed by attorney, the vendors shall not be required to show that the principal was alive at the time of execution (*x*).

(*s*) See L. P. A. 1925, s. 5, and First Schedule, Part II.

Possibility of issue.

(*t*) In a case of this kind it is well to provide against the risk of dispute by a special stipulation. As to where the Court will presume a woman to be past child-bearing, see *In re White*, [1901] 1 Ch. 570, and the cases there cited.

(*u*) L. P. A. 1925, s. 45; and see sect. 125, *ibid.*, in regard to instruments executed after December 31st, 1925.

(*x*) In cases where an instrument executed by attorney has been so executed pursuant to a power created otherwise than under sects. 123 and 127 of the L. P. A. 1925, it is incumbent on a purchaser to ascertain that the principal was alive at the time of the execution of the instrument, subject to sect. 124, which replaces sect. 47 of the C. A. 1881.

Rent, premises sold free and indemnified from.

42. The owner of the premises No. —, —— Street, comprised in the said lease as aforesaid, having by a deed, dated the —— day of ——, 18—, covenanted with the vendor to pay the rents reserved by the said lease and thenceforth to become payable, and to observe and perform the covenants and conditions of the said lease, and to keep the vendor, his heirs, executors, administrators and assigns indemnified against all claims and demands by reason of the non-payment of such rents, and also against the non-observance or non-performance of any of the covenants, conditions and agreements contained in the said lease so far as such covenants, conditions and agreements relate to the premises No. —, —— Street aforesaid, the premises now sold are to that extent, but not further or otherwise, sold freed and discharged from the rents payable under the said lease. And the purchaser shall, at his own expense, enter into a covenant with the vendor that, so far as regards the premises the subject of this sale, he the purchaser will observe and perform the covenants and provisions of the lease and indemnify the vendor, his executors, administrators and assigns in case of any non-performance or non-observance thereof. The premises being sold discharged from the said rents in manner aforesaid the mere fact of possession under the said lease at the time of completion of the purchase shall be accepted as sufficient evidence of the due performance of the lessee's covenants up to that time, and the purchaser shall not be entitled to make any requisition as to the performance of the said covenants, or any of them.

Purchaser to indemnify vendor as to covenants in lease.

Possession to be evidence of performance of covenants by vendor.

Sporting rights.

43. A statutory declaration that the owners of the estate, in common with the other freeholders of the manor of ——, have always claimed and exercised the right of shooting over the —— Moor, shall be accepted as sufficient evidence of the right.

Slips by roadside.

44. Lot —— contains some small slips of land lying between the ancient boundaries of the —— estate and the high road which have been inclosed several years. The purchaser shall be satisfied with the possession of such slips of land, and shall not require any title thereto.

Succession duty (*y*).

45. On the purchase of lot 4 by the mortgagor from [A. B.], and his mother [F. B.], [A. B.] covenanted to pay all succession duty which might have become payable on the death of the said

(*y*) See *ante*, p. 268, note (*p*).

V. TITLE—EVIDENCE OF TITLE, &C.

[F. B.] in respect of the succession of the said [A. B.]. The vendor's solicitor satisfied himself, on the mortgage being taken, that such succession duty had been duly paid, and the purchaser shall be satisfied with such covenant, and shall not make any requisition or objection with respect to the said succession duty.

Stamps and registration.

46. No objection shall be made on the ground of the non-production of the original of any deed or document of which an attested or office copy is produced, or on the ground of any deed or document of title, dated prior to the 17th May, 1888 (*z*), being unstamped or insufficiently stamped, or on account of any deed or document not being registered in the Middlesex Registry, and if such stamping or registration cannot be rectified or effected, the sale shall not be annulled, nor any objection to the title made on that account.

Stamps.

47. If the [any] purchaser shall require any unstamped or insufficiently stamped deed or document, dated prior to the 17th May, 1888, to be stamped, the same shall be stamped at his expense [*or*, at the expense of the purchaser requiring the same]; but the completion of the purchase is not to be delayed on that account.

Tithes, exemption from.

48. The vendor shall not be required to furnish any evidence of the exemption of the property from tithes, beyond a statutory declaration by the occupier that no tithe or rentcharge or other payment in lieu of tithes has been paid or demanded in respect thereof for the last —— years.

Tithes, exemption from.

49. By an award of the Inclosure Commissioners for the parish of C——, dated the —— day of ——, certain allotments of land were made to the patron and rector in lieu of rectorial tithes. No purchaser shall require any evidence, beyond that afforded by the inspection of these several awards, that the lands in the several parishes of A—— and C—— are tithe free.

Underlease, covenants in.

50. No objection shall be made on account of the covenants by the lessee in any underlease not corresponding with the covenants by the lessee in the lease or underlease under which the property is held, or in the superior lease.

Title under voluntary conveyance (*a*).

51. The present vendor acquired the property by deed of gift in 18—. No objection or requisition shall be made on this

(*z*) See *ante*, p. 221, note (*u*).

(*a*) Where the title depends on a voluntary conveyance a condition

ground, but the purchaser shall be satisfied with a statutory declaration to be made, if required, at the purchaser's expense by a member of the donor's family, that at the time of the gift the donor was, and that since that time he has continued to be, amply solvent, and has not dealt with the property.

Title under voluntary conveyance less than three years old (*b*).

52. The property passed to the present vendor under a voluntary conveyance dated the —— day of ——, 19—, from his father, now —— years of age. The purchaser shall assume that the donor was amply solvent at the date of the conveyance, and has since continued to be amply solvent, and shall be satisfied with the vendor's covenant to indemnify him and the purchased property against any duty which may become payable on the death of the donor within three years from the —— day of ——, 19—.

Expenses of making copies of deeds, &c., whether in vendor's possession or not, to be borne by purchaser (*c*).

53. In addition to all expenses by law made payable by a purchaser, the [each] purchaser shall bear all expenses which he may by law properly agree to pay of and incidental to making, procuring, verifying, furnishing, producing, and examining all attested, stamped, office, or other copies and abstracts of and extracts from Acts of Parliament, inclosure awards, records, proceedings of Courts, court rolls, deeds, wills, probate, letters of administration, and other documents, whether in the vendor's possession or not, which the [any] purchaser may require, for whatever purpose the same may be required respectively, and of and incidental to all inquiries, searches, and journeys incident to any of the purposes aforesaid.

Insufficiency or absence of covenant for

54. No objection or requisition shall be made on the ground of

such as that in the text should be inserted: see *Marsh* v. *Earl Granville*, 24 Ch. D. 11; *Noyes* v. *Paterson*, [1894] 3 Ch. 267. As to voluntary conveyances since 28th June, 1893, see the L. P. A. 1925, s. 173. It is not safe to take a conveyance from a donee within three months of the voluntary conveyance: see Bankruptcy Act, 1914, s. 37.

(*b*) See Finance (1909-10) Act, 1910, s. 59; and see also sect. 1 (b) of that Act; and see note (*p*), *ante*, p. 268. The purchaser is liable if duty becomes payable: L. P. A. 1925, ss. 16 (2), 17 (2), and L. C. A. 1925, s. 13. See also L. P. A. s. 43.

(*c*) This condition extends the provisions of the L. P. A. 1925, s. 45 (4), throwing certain expenses on the purchaser. Under sect. 42 (2) and (3) and sect. 125 (2) of the same Act, various expenses are to be borne by the vendor to the exclusion of the purchaser, notwithstanding any stipulation to the contrary.

v. TITLE—EVIDENCE OF TITLE, &c.

any defect or insufficiency in or the absence of any covenant or acknowledgment for the production and delivery of copies of or undertaking for the safe custody of any muniments of title.

production, &c. of deeds. (*d*).

VI. Identity of Parcels.

Statutory declaration.

1. The purchaser shall be satisfied with such evidence of the identity of the property as is afforded by the abstracted deeds, and shall not require any further or other evidence thereof beyond a statutory declaration (to be obtained at his own expense) that the property sold has been held and enjoyed in conformity with the title shown by the abstract for upwards of —— years before the day of sale [*or,* in cases where the title is by these conditions limited to commence at a shorter date than —— years, for the period for which the title is shown].

As to measurements.

3. No requisition or objection shall be made or taken on the ground of any discrepancy between the former and present descriptions or measurements of any lot.

As to different tenures and discrepancies.

4. The vendor shall not be required to distinguish the freehold from the former copyhold parts of any lot, nor to distinguish former copyholds of different manors, or to distinguish the portion of the property in respect of which the yearly rentcharge of £——, or any other rent, or any annual payment mentioned in the particulars is payable, or to reconcile or identify or connect any of the descriptions in the several deeds or documents abstracted with each other, or any of such descriptions with the description in the particulars, and no further evidence of identity shall be required.

As to different tenures.

5. The vendor shall not be required to distinguish the parts of any lot held under different titles, nor to distinguish the former copyhold part of lot 1, nor to distinguish the leasehold part of any lot, further than the same can (if at all) be distinguished by the descriptions in the abstract.

Boundaries of manors.

6. The vendor shall not be required to show the boundaries or limits of the respective manors included in the sale, or to specify the particulars of the boundaries or rights (if any) belonging thereto, or to distinguish the tenements or properties comprised therein upon or out of which any quit or other rents or payments are, or may be, charged or issuing, or to furnish any other infor-

(*d*) As to deeds which it is impossible for a vendor to produce, see *Halkett* v. *E. Dudley,* [1907] 1 Ch. 603.

mation in relation to such manors, or either of them, further or otherwise than the same respectively may be shown by the manorial books and documents in the vendor's possession, and no objection shall be taken on account of any such books or documents being defective or wanting. The statements of facts contained in the particulars are believed, and in the absence of evidence to the contrary shall be presumed to be correct, but the vendor shall not be required to verify the same. VI. IDENTITY OF PARCELS.

6a. The vendor shall not be required to show or define the boundaries or limits of any allotment made under any enclosure award or to furnish any evidence or information with respect thereto beyond such as may be afforded by the award map (*e*). Boundaries under awards.

7. The property is believed and shall be taken to be correctly described as to quantity and otherwise, the descriptions and quantities in the particulars having been taken from an actual survey; and the vendor shall not be required to reconcile them with other surveys or descriptions, or to account for the fact that the entire quantity in the particulars exceeds the quantities set forth in the muniments of title. Discrepancy between old and present measurements.

8. The premises were formerly known as No. ——, in C—— Road aforesaid, and the purchaser shall not make any objection or requisition on this account, or require any evidence of the change of numbers. Change of number in street.

VII. Fixtures—Timber (*f*)—Crops, &c.

1. All timber and timber-like trees, pollards, tellers and saplings, down to the value of one shilling per stick inclusive, and also the fixtures, shall be paid for at a valuation to be made Timber, fixtures, &c.

(*e*) *Collis* v. *Amphlett,* [1918] 1 Ch. 202, and [1920] A. C. 271; and see *ante,* p. 258, note (*y*).

(*f*) Trustees ought not to sell timber separately from the land unless expressly authorised so to do by the instrument creating the trust: *Cholmely* v. *Paxton,* 3 Bing. 207. As to the sale of timber on settled estates apart from the land, see Settled Land Act, 1925, s. 66; *Re Llewellin,* 37 Ch. D. 317; *Cockerell* v. *Chomeley,* 3 Russ. 565. As to what is "timber," see *Honywood* v. *Honywood,* 18 Eq. 306, 308; and *Re Tower's Contract,* [1924] W. N. 331. As to the estate and succession duties payable on the timber, trees and wood growing on the property of a person dying on or after the 30th of April, 1909, see Finance (1909-10) Act, 1910, s. 61 (5), and Finance Act, 1912, s. 9; and see Hanson, 6th ed. 731; *Re Smyth,* [1918] 1 Ch. 118; 87 L. J. Ch. 40. Timber, sale by trustees. Estate and succession duties.

VII. FIXTURES, TIMBER, CROPS, &c.

within twenty-one days after the sale by the auctioneer [*or*, by two referees or their umpire, to be chosen in the usual manner], who shall determine what articles are within this condition. The amount of such valuation shall be considered as part of the purchase-money.

Timber at a valuation already made.

2. The timber and timber-like trees, tellers, pollards and saplings have been valued by Mr. ——, the auctioneer, at the following sums, that is to say, as to lot 1, £——; lot 2, £——, &c. Each purchaser shall, on completing his purchase, pay in addition to the balance of his purchase-money, the amount of such valuation in respect of the lot or lots purchased by him.

Timber, fixtures, crops, &c. when farm sold as a going concern (*ff*).

3. The timber and timber-like trees, tellers, pollards, and saplings, down to the value of one shilling per stick inclusive, and the underwoods and plantations down to the stem, and the tenant's fixtures in and about the dwelling-house, and all iron hurdles and iron fencing, and also all agricultural machinery and implements, and the growing crops, live and dead stock [hay and straw, dung and compost on lands in hand, acts of husbandry, tillages and workmanship of fallows], and all tenant's rights and property usually taken by an incoming from an outgoing tenant, shall be paid for by the purchaser at the time fixed for the completion of the purchase at a valuation to be made, prior to completion, at the joint expense of the vendor and purchaser, on the basis of the Agricultural Holdings Act, 1923, by two referees, one to be nominated by the vendor and the other by the purchaser, or by an umpire to be appointed by such referees before proceeding to a valuation; but if either the vendor or purchaser shall refuse or neglect to nominate a valuer, and to notify such nomination in writing to the other of them before the —— day of —— next; or if the valuer nominated by either party shall refuse or neglect to act, then the decision and valuation shall be made by the referee (if duly notified as aforesaid) of the other party alone; and the referees or referee, or umpire, shall have power to determine what are "tenant's fixtures" and "tenant's property" within this condition. After such valuation has been made, the property valued shall be at the risk of the purchaser, who shall (on payment of the balance of his purchase-money and the amount of the said valuation) be entitled to enter into occupation [but the vendor shall be entitled to use the barns, granary, and yards for the

(*ff*) As to sale by a tenant for life or estate owner under the S. L. A. 1925, of timber and fixtures at a valuation, see *ibid.*, sect. 49.

purpose of housing and thrashing the present year's crops until the —— day of ——]. VII. FIXTURES, TIMBER, CROPS, &C.

4. The inside and outside blinds, gas and electric fittings, pipes and wires, picture rods, iron safe in pantry, &c., as specified in an inventory, to be produced at the sale, shall be taken and paid for by the purchaser at a price to be named by the auctioneer at the time of sale [*or*, at a valuation to be made, at the joint expense of the vendor and purchaser, by two referees or their umpire, to be chosen in the usual way]. Tenant's fixtures in a town house.

5. All the tenant's fixtures, fittings, furniture [machinery], implements, and utensils in and upon the premises offered for sale, and used or employed in the vendor's trade or business of a ——, and all the stock-in-trade and book or other debts belonging and owing to the vendor, and the benefit of all contracts and engagements relating to the said trade or business entered into between the vendor and other persons, shall be taken by the purchaser at a valuation to be made by the auctioneer [*or*, at the joint expense of the vendors and purchaser, by two valuers, or their umpire, to be chosen in the usual manner], and the decision of the auctioneer [*or*, of the said valuers or their umpire] as to what are tenant's fixtures or fittings shall be conclusive. Fixtures, furniture, stock-in-trade, &c., on sale of a shop or factory as a going concern.

6. The purchaser shall pay for all the fixtures and things included in an inventory already made out and signed by the auctioneer, which may be seen at his office, according to a valuation to be made (at the joint expense of the vendors and purchaser) by two referees or their umpire in the usual way, the amount whereof shall be considered as part of the purchase-money. Fixtures in inventory to be taken at a valuation (*g*).

7. The purchaser of each lot shall declare, by notice in writing to be delivered to the vendors' solicitors on or before the —— day of June next, his option to take or refuse the grass and other growing crops at a valuation to be made by a referee or by two referees or their umpire to be chosen in the usual manner, at such time between the —— of June and —— of —— following as the vendors shall appoint; and in default of the purchasers so declaring such option, the vendors shall be at liberty, at any time before the crops respectively shall be fit to get in, either to require the purchaser to purchase the same at a valuation, or to sell the Purchaser to declare his option to take the grass and crops.

(*g*) It is very desirable to ascertain the articles in the way specified in the text, if it can conveniently be done, as the meaning and application of such expressions as "fixtures," "tenant's fixtures" are subjects of frequent dispute.

VII. FIXTURES, TIMBER, CROPS, &C.

same by auction or otherwise on the premises, for their own benefit, with the right of stacking in the stack-yard until the —— day of ——.

Crops not removed by vendor to be taken by purchaser at a valuation.

8. The vendors shall be at liberty to gather and remove all crops which shall be on the land before the —— day of ——; and the respective purchasers shall take all crops which shall be on the land on that day at a valuation to be made by two referees or their umpire, to be appointed in manner mentioned in the —th condition.

Reservation of right to remove or sell fixtures, &c.

9. The vendors reserve to themselves the right to remove at any time before completion (doing no unnecessary damage), the summer-houses, garden seats, and other effects not included in the sale, or to sell the same on the premises by auction.

Reservation of right to hold auctions, thrash corn, &c. until a fixed date.

10. The vendors reserve the right of selling by auction upon the farms and lands in hand, the live and dead farming stock, &c., at any time within sixty days after the sale; also the right of using the barns and yards with stabling, &c., for —— horses [and stalls for —— head of cattle], for stacking and thrashing out the corn and crops, and carrying off or feeding the hay, fodder, &c., till the Lady-day following.

Compensation for damage by game.

11. Any compensation for damage by game, payable under sect. 11 of the Agricultural Holdings Act, 1923, shall be paid by the vendor, if notice in writing by the tenant under that section shall be given prior to the day fixed for completion; but if such notice shall be given on or after that day then such compensation shall be paid by the purchaser, who shall indemnify the vendor against the same.

Public-house valuations.

12. The furniture, tenant's fixtures and fittings on the premises shall be taken and paid for by the purchaser at a valuation to be made by two appraisers or their umpire in the usual way, and the decision of such appraisers or their umpire as to what are tenant's fixtures and fittings shall be conclusive. Such of the stock-in-trade as shall not have been sold or disposed of prior to the day fixed for completion shall be taken and paid for by the purchaser at a valuation to be made by two gaugers or their umpire in the usual way, and the amount of such valuations shall be paid for at completion by the purchaser, who shall also at the same time pay the due proportion for the time unexpired of the fees and premiums for the licences, compensation duty (*h*) [and fire insurances] in respect of the premises, and of all outgoings.

(*h*) See *Horton* v. *Penn*, [1907] 1 K. B. 561.

VIII. Insurance—Repairs—Expenses incurred by Vendor before Completion.

VIII. INSURANCE, REPAIRS, EXPENSES, &c.

Purchaser fixed with notice of state of property.

1. The purchaser shall be deemed to buy with full notice of the state and circumstances of the property as regards fire insurance, repairs, and other like matters.

Purchaser to have benefit of existing insurance (*i*).

2. During the period between the sale and completion the property shall be at the purchaser's risk, but subject to the consent of the insurance office, and to payment by the purchaser of a proportionate part of the premiums for the unexpired term of the existing policy of insurance against fire, the purchaser is to be entitled to the benefit of such insurance. The vendors, however, do not guarantee the existence or validity of any such insurance, and shall not be bound to keep up or renew the same.

Purchaser to reimburse vendor for expenditure incurred before completion.

3. If before the completion of the purchase the vendor shall have expended any money in complying with any requirement enforceable against him, and made after the sale by the municipal corporation, county or district council, or other local authority in respect of the property, or of the paving or flagging of the roads, streets, or passages adjoining the same, the purchaser shall, on the completion of the purchase, repay to the vendor the amount so expended by him, and in case any such requirement shall not have been complied with before the completion of the purchase, the purchaser shall indemnify the vendor in respect thereof; but the vendor shall, upon receiving notice of any such requirement, inform the purchaser thereof, and give to him the option of complying therewith in lieu of the vendor so doing, and shall not expend any moneys for any of the purposes aforesaid, unless the purchaser shall request him so to do, or shall refuse or neglect to comply with such requirement.

IX. Reservations and Restrictions—Easements—Tenancies, Charges and Incumbrances—Apportionment (*k*).

Reservation of minerals (*l*).

1. The minerals in or under the property, with all usual powers for working, getting and disposing of the same from and under adjoining property of the vendor [including power to let down

(*i*) See L. P. A. 1925, s. 47.

(*k*) See *ante*, p. 219, note (*q*), as to the importance of specifically mentioning easements, restrictions, charges, &c. affecting the property.

(*l*) By the T. A. 1925, s. 12 (2), trustees for sale or with a power of sale may sell the mines and surface separately without leave of the

IX. EASEMENTS, RESERVATIONS, CHARGES, &C.

the surface, whether built upon or not (*m*)], are reserved to the vendor, his heirs and assigns, but so that the property now offered for sale shall not for the purpose of working such minerals be opened on the surface.

Minerals reserved by former deed, &c. (*n*).

2. The property is subject to the reservations of mines and minerals contained in a conveyance dated the —— day of —— [*or* "the reservation of mines and minerals, and other reservations and liabilities, contained in or imposed by an enclosure award dated the —— day of ——"]. A copy of the said conveyance [award] will be produced at the sale, and may be seen at the office of the vendor's solicitors at any time within —— days previous to the sale. And the purchaser shall be deemed to have full notice of the contents thereof.

Means of access, and apportionment of rent.

3. The purchasers shall be deemed to have knowledge of the available means of access to the several lots, and shall make no requisitions or objections on the subject. Some of the lots are held by the tenant with adjoining land at an entire rent; the purchasers shall arrange for the apportionment of such rent.

Purchaser to take subject to rights of way to be reserved to vendor, and with benefit of a right of way to purchaser.

4. The property is sold subject to a right of way of the width of —— feet, for all purposes, to be reserved to the vendors, or as they shall direct, as marked out in the plan, and distinguished by the letters A and B at the extremities thereof. And also with the benefit to the purchaser of a right of way for all purposes, as marked out in the plan, and distinguished by the letters B and D at the extremities thereof.

Court. By the S. L. A. 1925, s. 50, a tenant for life has similar powers. See also sect. 28 (1) of the L. P. A. 1925, which gives trustees for sale all the powers which a tenant for life would have under the S. L. A. 1925.

The power may be exercised by personal representatives: *Chaplin* v. *Staffs. &c.*, [1922] 2 Ch. 824.

A mortgagee, by mortgage made before 1st January, 1912, must apply to the Court for the purpose: see L. P. A. 1925, s. 92; unless he is expressly authorised by the mortgage, but if the mortgage was created after the 31st December, 1912, the mortgagor may sell without leave of the Court: L. P. A. 1925, s. 101 (2).

(*m*) The vendor may not let down the surface without these words: see *New Sharlston Collieries Co., Ltd.* v. *Earl of Westmorland,* [1904] 2 Ch. 443, n. As to the right of surface owner to support, see Key & Elph., 11th ed. vol. i. p. 350.

(*n*) See *Re Jackson and Haden,* [1906] 1 Ch. 412, as to the importance of this condition.

IX. EASEMENTS, RESERVATIONS, CHARGES, &c.

Easements to be created.

5. The purchaser of lot 1, if that lot is sold separately from lot 2, shall have a right of drainage through lot 2 into ——, as specified in the particulars; and such right, together with proper remedies, if required, for securing the same, shall either be reserved on the sale of lot 2 or granted by the purchaser of lot 2 after the conveyance thereof to him, as the vendor shall direct.

Agreement as to enjoyment of light to windows (*o*).

6. The property is subject to an agreement dated the —— day of ——, 18—, and made between [A. B.], of the one part, and the vendor, of the other part, as to the enjoyment of light to certain windows in the vendor's premises, for which the vendor agreed to pay an annual rent of —— per year if demanded, a copy of which agreement can be seen at the offices of the vendor's solicitors.

Exception of right to light, &c. (*p*).

7. No purchaser shall be entitled to any right of light or air or other easement which would interfere with the free use of any adjoining or neighbouring lot for building purposes, and [the conveyances shall contain an express exclusion of any such right or easement] [*or*, the conveyance to the purchaser shall authorise the vendor and all persons entitled under him, or his or their assigns, owners, and occupiers of the adjoining property from time to time and at any time, to obstruct and interfere with the access of light and air to the property by erecting buildings, or altering or enlarging buildings on such adjoining property without notice to or further consent by the purchaser].

Right to obstruct light.

Annuity charged on the land with other property retained by vendor (*q*).

8. The property sold [each lot] is, together with other property of large value belonging to the vendor, subject to a single life annuity of 70*l.* per annum, payable during the life of a lady now aged forty-five years. The vendor will endeavour to obtain a

(*o*) On the sale of a portion of a tenement apparent easements which are legally appurtenant or are necessary for the reasonable enjoyment of the part granted over the other part of the tenement (*Re Walmsley and Shaw's Contract*, (1917) 1 Ch. 93) pass to the grantee, but with certain exceptions, such as ways of necessity, there is no implied reservation of easements in favour of the grantor: see *Wheeldon* v. *Burrows*, 12 Ch. D. 31; *Broomfield* v. *Williams*, [1897] 1 Ch. 602; *Ray* v. *Hazeldine*, [1904] 2 Ch. 17; *Derry* v. *Sanders*, [1919] 2 K. B. 223, and other cases.

(*p*) *Haynes* v. *King*, [1893] 3 Ch. 439.

(*q*) An annuity for lives under will or marriage settlement is not a charge within the meaning of sects. 4 (5) or 10 of the L. C. A. 1925, and need not be registered, but its existence if charged upon land appears to constitute a settlement: S. L. A. 1925, s. 1 (v); and if so, the land is settled land accordingly: sect. 2, *ibid.* Under sect. 13 of the S. L. A. 1925, the vendor therefore could not convey the legal estate during the life of the annuitant unless a vesting deed is in existence, and under

IX. EASEMENTS, RESERVATIONS, CHARGES, &C.

release from the annuitant, but should he be unable to do so (of which inability the statement of his solicitor shall be sufficient evidence) the purchaser shall accept and be satisfied with an immediate conveyance of the equitable estate in fee simple of the vendor, subject to the annuity, with a covenant by the vendor to indemnify the purchaser and the property purchased by him against the said annuitant, and to execute on the death of the annuitant a conveyance of the legal estate, to be prepared by the purchaser, and the purchase-money shall be paid to the vendor against the conveyance of the equitable estate in fee simple, and the conveyance of the legal estate shall be deferred till the death of the annuitant.

Annuity charged on property sold and other property (*q*).

9. The property sold is, together with other property, subject to a single life annuity of 70*l*. per annum, payable during the life of a lady now aged fifty years. By a covenant made by the vendor's predecessor in title who conveyed the property to the vendor, the said predecessor covenanted to indemnify the purchaser, his heirs and his assigns, and the property now sold against the said annuity. By the conveyance (which can be registered as an estate contract) the vendor's equitable estate in fee simple shall be conveyed to the purchaser subject to the said annuity, but with the benefit of the said covenant, and the purchase-money shall be paid to the vendor against such conveyance, and no objection or requisition shall be made on the ground of or in respect of the said annuity. On the death of the annuitant the vendor, if required, shall execute a conveyance of the legal estate to the purchaser, to be prepared by the purchaser, and the actual

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sect. 42 of the L. P. A. 1925, an agreement to sell an equitable interest where the vendor can procure the legal estate to be vested in himself operates as an agreement to sell the legal estate also. But there seems nothing to prevent the actual conveyance of the legal estate being deferred, while in the meantime the purchaser is protected by the registration of the conveyance as an estate contract under the L. C. A. 1925, s. 10. The expense and application to the Court under L. P. A. 1925, s. 50, or in connection with L. P. A. 1925, s. 2 (2), or the retention of the purchase-money by the trustees (if any) may wholly frustrate the object of the sale, and the editor offers the suggestion in Forms 8 and 9 as a possible solution of the difficulty. In the ordinary case where a considerable property is offered to one purchaser subject to a substantial annuity, a trust for sale or a vesting deed seems to be the most expedient procedure to free the land from the incumbrance.

(*q*) See previous note.

conveyance of the legal estate shall be deferred till the death of the annuitant.

IX. EASEMENTS, RESERVATIONS, CHARGES, &c.

Rentcharges and building covenants (*r*).

10. By the conveyances of the 2nd April, 18—, and 12th December, 18—, respectively, rentcharges of £—— and £—— respectively, with usual powers of distress and entry for securing the same, are limited to the Corporation of ——. The said conveyances of the 2nd April, 18—, and 12th December, 18—, also contain covenants on the part of the grantees relating to payment of the rentcharges, and to building on, and user of the premises comprised in the conveyances respectively, and other like matters. These conveyances or copies thereof will be produced at the sale, and may be inspected at the aforesaid office of Messrs. ——, during the usual business hours, for a week before the day of sale, and the purchaser shall take, subject to and with notice of the said several rentcharges and covenants, and shall covenant in his conveyance to pay and perform the same respectively, and to indemnify the vendor therefrom, and the production of receipts for the last payments of the said respective rentcharges accrued previously to the completion of the purchase shall be conclusive evidence that all the said covenants have been performed up to the completion of the purchase.

Quit rents and incidents of tenure (*s*).

11. No objection or requisition shall be made on account of any quit or other rent now or heretofore payable to the lord or lords of the manor of ——, of which both lots are holden, and the sale of each lot shall be subject to all subsisting manorial rights and incidents of tenure.

Reservations, &c. in Inclosure Act.

12. All such parts of the property as have been awarded under any Inclosure Act will be sold, and shall be expressed to be conveyed subject to the exceptions, reservations, and provisions of the Act, and the obligations imposed by the award thereunder (*t*).

Repairs of fences, bridges, &c.

13. The property is stated in the entry in the Land Registry, dated, &c., to be subject, with other hereditaments, to such liability for fencing, draining, and repair of bridges as then affected the same. The vendor believes that such liability is practically of no

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(*r*) As to the importance of stating specifically in the particulars or conditions the nature of charges and incidents of tenure of an unusual character, see *ante*, p. 219, note (*q*).

(*s*) See *ante*, p. 212, note (*a*).

(*t*) For conditions as to the insertion in the conveyance of covenants and provisions imposing obligations and restrictions on the purchaser, see *post*, pp. 291 *et seq.*

IX. EASEMENTS, RESERVATIONS, CHARGES, &C.

importance no payment having been made or claimed, so far as he is aware, in respect of any of the matters aforesaid for some years past, and each purchaser shall take the property purchased by him subject to the said liability (if any) affecting the same, and shall make no requisition or objection, and shall ask for no information in respect of the grounds of the vendor's said belief, or of the said liability or otherwise in respect or by reason of any of the matters mentioned in this condition.

Restrictive covenants as to building, &c.

14. The deed of —— August, 19—, contains certain covenants on the part of the vendor's testator relative to building and otherwise, and the deed of —— December, 19—, also contains covenants relative to building and otherwise on the part of the vendor. These deeds will be produced at the sale, and may be previously inspected at the office of the vendor's solicitor. The purchaser shall be deemed to purchase the property subject to these covenants, and with full notice of all the contents of these deeds.

Death duties (*u*).

15. The property is sold subject to the death duties, which will become due and payable on the decease of the present tenant for life.

Apportionment of land tax, vendor not to be required to obtain.

16. The vendor shall not be required to obtain the apportionment of any land tax, or tithe rentcharge, or to obtain the legal apportionment by consent of tenants, or otherwise, of any rents referred to in the particulars as being apportioned.

Apportionment of tithe rentcharge.

17. The apportionment of the commutation rentcharge in lieu of tithes (which is charged upon the whole of the property now sold) shall be effected by and at the expense of the respective purchasers, and the rentcharge and expenses shall be apportioned in proportion to the amounts of the respective purchase-moneys; and if any lot is unsold, the vendor shall, for the purpose of this condition, be considered as a purchaser for such sum as the same shall be valued at by the auctioneer.

Rent, creation of.

18. Some part of lot —, reputed to have been holden formerly

(*u*) See *ante*, notes, pp. 267 and 268, and L. C. A. 1925, s. 10; L. P. A. 1925, ss. 17 and 205. Death duties in respect of deaths after 1925 will not affect a purchaser (see definitions of "death duties" and "purchaser" in sect. 205 of the L. P. A. 1925) unless they are registered as land charges. Purchasers (for money or money's worth) of registered land will not be affected by charges for death duties whether or not a claim for death duties may have been noted on the register: L. R. A., s. 73 (1).

of the lord of the manor of ——, appears to be subject to a chief rent of —— and to a heriot or sum equal in value to a heriot in kind (*x*), payable on the death of every tenant; the said lot is sold subject thereto, but the vendor shall not be required to adduce any evidence as to the origin or creation of the said rent or heriot, or to identify the part of such lot on which the said rent and heriot are charged.

Rents, fee farm.

19. The fee farm rent of 2*l.* 5*s.* 6*d.*, mentioned in the particulars of lot 1, appears from the recitals in the said indenture of ——th July, 1872, to be a part of a like rent of 4*l.* 11*s.*, created in or previously to the year 1798: and the rent of 1*l.* 10*s.* mentioned in the particulars of lot 2 appears to be part of a like rent of 2*l.* 5*s.* 6*d.*, created in the year 1796. The vendors shall not be required to furnish any information respecting any of the above-mentioned rents except such as may appear by the abstracted instruments. As regards each of the rents mentioned in the particulars, a receipt for the rent which shall have last accrued previously to the day fixed by these conditions for the completion of the purchase shall be accepted as sufficient evidence that all covenants and conditions affecting the premises have been performed and observed up to the date of such receipt: and the purchaser shall assume that the person by whom such receipt purports to be signed was at the date thereof the person duly qualified to give a discharge for such rent, and that such receipt was valid in all respects. No purchaser shall make any objection, requisition, or inquiry on account of the persons entitled to the said larger rents of 4*l.* 11*s.* and 2*l.* 5*s.* 6*d.*, not having concurred in the apportionment thereof or otherwise on account of such larger rents, or on account of any rent antecedent to any of the rents mentioned in this condition, should there be any such antecedent rent.

Last receipt to be evidence of performance of covenants, &c.;

title of person giving receipt not to be inquired into (*y*).

Rentcharge; creation and apportionment.

20. Inasmuch as the fee farm rent of 10*l.*, issuing out of lot —, forms part of a rent of 50*l.*, which, in the year 17—, was granted out of a larger piece of ground, and the remainder of

(*x*) See L. P. A. 1922, s. 128 (1) and (2).

(*y*) The statutory condition contained in the L. P. A. 1925, s. 45 (2) and (3), applies only to leaseholds; it is therefore necessary, when dealing with property out of which fee farm rents or other rentcharges are issuing, to insert the condition as to the last receipt being evidence, as formerly.

IX. EASEMENTS, RESERVATIONS, CHARGES, &c.

such rent of 50*l.* is amply secured by the residue of the ground charged therewith, the vendor shall not be required to prove the creation or apportionment of the original rent, or the discharge of the premises therefrom, or its being sufficiently secured out of the other part charged, otherwise than by producing the receipts for the said rent of 10*l.* for the last —— years.

X. Compensation for Misdescription, &c. (*z*).

No compensation (*a*).

1. If any error or misstatement in the particulars [or plan thereto annexed], or in these conditions shall be discovered, the same shall not annul the sale, nor shall any compensation be made by or allowed to the purchaser in respect thereof.

Compensation to be settled by arbitration.

2. If any error or misstatement shall appear to have been made in the particulars [or plan thereto annexed], or these conditions, the sale shall not be annulled thereby, nor shall the purchaser be thereby discharged from his purchase, but a compensation shall be allowed or made to or by the purchaser, as the case may be, and the amount of such compensation shall be settled by arbitration in the usual manner.

No compensation as to quantities; compensation for other matters to be settled by auctioneer.

3. All the measurements and quantities of the property are believed and shall be deemed to be correct, and shall not be the subject of compensation if incorrect. Any misstatement or any error or omission in other respects, which may be discovered in the particulars affecting any lot, shall not annul the sale, but if pointed out before completion, compensation shall be paid or allowed on account thereof to the vendor or the purchaser, as the case may be and require, and the amount of such compensation, in case of dispute, shall be settled by the auctioneers. No compensation shall be allowed or paid for any misstatement, error, or omission, unless the same shall be discovered and compensation therefor shall be demanded in writing before the completion of the purchase (*b*).

No compensation as to quantities;

4. The quantities of land stated in the particulars having been ascertained by an eminent surveyor about the year —— must

(*z*) See *ante*, p. 221, note (*x*); *post*, p. 312, note (*l*).

(*a*) See, as to this condition, *Eastwood* v. *Ashton*, [1913] 2 Ch. 39.

(*b*) As to the last sentence of this condition, see *Bos* v. *Helsham*, L. R. 2 Ex. 72; distinguished in *Eastwood* v. *Ashton*, [1913] 2 Ch. 39; [1915] A. C. 900.

be accepted by the purchaser as correct, and if any error or omission in the particulars, or in the description of the property in these conditions, other than an error as to quantity, shall be discovered, the same shall not annul the sale, but compensation shall be allowed by the vendor or purchaser in respect thereof, and such compensation, if the parties differ, shall be settled by two arbitrators or their umpire in the usual way.

X. COMPENSATION.

compensation for other matters to be settled by arbitration.

XI. Execution, Form, and Contents of Conveyance—Apportionment of Rents of Leaseholds.

1. The vendors being [personal representatives] trustees [*or*, mortgagees] shall be required to give only the statutory covenant against incumbrances implied by reason of their being expressed to convey as [personal representatives and] trustees [*or*, mortgagees].

Trustees and mortgagees (*c*).

2. The vendors are trustees selling under a power of sale, with the consent of a beneficiary who is abroad, and shall be required only, &c. [*ut ante*]. Such consent shall be sufficiently evidenced by a letter signed by the beneficiary authorising the trustees to effect a sale. The genuineness of the letter and signature shall be deemed to be sufficiently authenticated by a statutory declaration to be made, if required, at the purchaser's expense, by a person acquainted with the handwriting of the beneficiary.

Trustees for sale where consenting beneficiary is abroad.

3. The vendor is selling as tenant for life, under the powers of the Settled Land Act, 1925, and he shall not be required to enter into any covenants for title other than such as are implied by his conveying as beneficial owner, subject to a proviso that as regards the reversion or remainder expectant on his life estate, and the title to and further assurance of the property after his death, such implied covenants shall not extend to the acts or defaults of any person other than himself and his heirs and persons claiming or to claim under or in trust for him or them. The trustees of the settlement will concur in the conveyance, but only for the purpose of [testifying their consent to the sale and (*e*)] acknow-

Tenant for life selling under Settled Land Acts (*d*).

(*c*) L. P. A. 1925, s. 76.

(*d*) As to the covenants for title by a tenant for life in the absence of a condition, see *Earl Poulett* v. *Hood*, L. R. 5 Eq. 115.

(*e*) The words in brackets will be required only where the settlement

XI. CONVEYANCE—APPORTIONMENT OF RENTS.

ledging the receipt of the purchase-money and of the amount of the said valuation, and their concurrence shall not be required for any other purpose.

Mortgagee not to be required to release by a separate instrument (*f*).

4. The property offered for sale is now, with other premises, subject to a mortgage to secure £—— and interest. The purchase-money will be received by the mortgagee in part payment of the mortgage debt. The mortgagee will join in the conveyance to the purchaser, and the vendor shall not be required to procure a reconveyance, reassignment, or release by a separate instrument.

Mortgagee.

5. Upon payment of the remainder of the purchase-money the vendor and her trustee and her mortgagee, and all other necessary parties (if any), will execute a proper assurance of the premises to the purchaser, but such assurance, and every other assurance and act other than any assurance or act of which the expenses are, under any statute, to be borne by the vendor to the exclusion of the purchaser, notwithstanding any stipulation to the contrary, shall if required by the purchaser for getting in, surrendering, or releasing any outstanding estate, right, title, or interest, or for completing or perfecting the vendor's title, or for any other purpose, be prepared, made, and done by and at the expense of the purchaser, and every such assurance other than as aforesaid shall be tendered or left by him not less than ten days before the —— day of —— next, at the office aforesaid, for execution by the vendor and other necessary parties (if any), and the expense of the perusal on behalf of and execution by all parties (other than the vendor), and her trustee and mortgagee, of all such assurances other than as aforesaid shall be borne by the purchaser. The existing mortgage will be paid off out of the purchase-money, and the mortgagee will concur in the conveyance, and the purchaser shall not require any reconveyance by separate deed.

Part of purchase-money to be

6. If the [any] purchaser shall, within —— days after the sale, give to the vendor's solicitors notice in writing that he desires

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was made before the 1st January, 1926, or the settlement, if made after 1925, expressly provides for the consent of the trustees, and the property offered for sale includes the principal mansion house and demesnes, &c.: see S. L. A. 1890, s. 10, and S. L. A. 1925, s. 65. See *post*, p. 319, note (*a*).

(*f*) As to the effect of a mortgagee's receipt operating as a reconveyance, see L. P. A. 1925, s. 115 (1), (2) and (4).

to borrow any portion not exceeding —— per cent. of the purchase-money, the vendor will advance, or procure to be advanced, to the [such] purchaser the amount stated in such notice; such advance to carry interest at the rate of five per cent. per annum, and to be secured with such interest by mortgage of the property [lot or lots purchased by him] at the purchaser's expense, such mortgage to contain provisions for continuing the loan at the purchaser's option for —— years from the date fixed for completion, conditionally on punctual payment of interest. But this offer to advance part of the purchase-money is conditional on the purchase and mortgage being completed within the time fixed for completion.

advanced on mortgage (*g*).

7. The [any] purchaser expressing in writing, within seven days after the delivery to him of the abstract, his willingness to accept the title, without making any requisition or objection with respect thereto, shall be entitled, if he so desire, to a conveyance of the property [his lot or lots] free of cost, except stamp duty, and a fee of £——, such conveyance to be in a form which will be produced at the sale, and may be seen afterwards at the office of the vendor's solicitors.

Free conveyance (*h*).

7a. Any purchaser expressing in writing, within —— days after delivery of the abstract to him, his willingness to accept (1) the title, whether or not he may have made any requisition or objection in respect thereto, and (2) the conveyance in the form hereinafter referred to without modification other than required by the special circumstances of his lot or lots, shall be entitled, if he so desire, to a conveyance of the property free of cost except stamp duty. A draft form of the conveyance will be produced at the sale, and any purchaser will be entitled to a copy thereof on payment of —— shillings therefor.

8. The agreement for the said lease has [The muniments of title have] been deposited by way of equitable mortgage: there

Equitable mortgagees not to be

(*g*) For a condition providing for part of the purchase-money to remain on mortgage in the case of registered land, see *post*, p. 306, f. 17.

(*h*) See L. P. A. 1925, s. 48, restricting vendors from preventing purchasers and others from employing their own solicitors; and K. & Elph., 12th ed., Title VI. "Completion," Form 13, note (*e*); and for a condition as to free conveyance in the case of registered land, see *post*, p. 305, f. 16.

XI. CONVEYANCE—APPORTIONMENT OF RENTS.

has been no written instrument of deposit, and the equitable mortgagees shall not be required to do more than give a letter to each purchaser stating that they have been paid off.

required to concur (*i*).

Equitable mortgagees and bankruptcy trustee.

9. The vendors are equitable mortgagees selling with the concurrence of the trustee of the property of [A. B.], a bankrupt. Upon payment at the time and place above specified of the residue of the purchase-money, and the value of the fixtures, as above mentioned, the said trustee, by direction of the vendors, will convey the freehold property. The assurances shall be prepared by and at the expense of the respective purchasers, and shall be left for execution at the office aforesaid, not less than ten days before the said —— day of ——, 19—. The purchasers shall not be entitled to any covenant for title from the vendors, or from the said trustee, other than the implied statutory covenant that they have respectively done no act to incumber.

Executors concur to release charge (*k*).

10. The executors of the said [*testator*] will join in the conveyance to release the aforesaid charge in respect of redeemed land tax, and will receive a proper proportion of the purchase-money, such proportion to be settled by the auctioneers.

Execution by power of attorney (*l*).

11. The vendor, being abroad, has executed a power of attorney, authorising a sale of the premises mentioned in the particulars

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(*i*) Equitable mortgagees by deposit have no statutory power of sale even though a memorandum conferring a power of sale accompanies the deposit, there being no mortgage by deed: see L. P. A. 1925, s. 100. Unless the memorandum gives a right to call for a legal mortgage, the equitable mortgagee must, by sect. 90 of the L. P. A. 1925, apply to the Court for an order for sale, and the Court can grant facilities enabling the mortgagee to carry out the sale. And see also sect. 110, *ibid.*, which requires the leave of the Court to be given before sale by a mortgagee under his statutory or express power if the power is exercisable by reason of the mortgagors committing an act of bankruptcy or being adjudged a bankrupt.

(*k*) Apparently all executors who have proved must join, but execution by them is sufficient without the concurrence of other executors (if any) who have not proved: A. E. A. 1925, s. 2.

(*l*) See L. P. A. 1925, ss. 123—129. By sect. 125, *ibid.*, the power, if it relates to one transaction only, need not be filed, otherwise it or a certified copy thereof or of the necessary portions are to be filed at the Central Office unless the power relates to registered land, and in that case the instrument or copy must be filed at the Land Registry; if the

annexed hereto. No objection shall be made as to the right of the attorney to sell the said premises, or to anything contained in the said power of attorney, and the conveyance or assignment to the purchaser shall be executed by the attorney, and no objection shall be taken to such execution, nor shall any evidence be required that the vendor is alive at the date of such execution.

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12. Lots —— being held under one lease at an entire rent, the purchaser of the largest part thereof in value (in this condition referred to as the lessor) shall take an assignment of the said lease, and shall be entitled to possession of all the common title deeds, and shall execute to the other purchasers underleases for the unexpired residue of the term granted by the original lease, wanting three days, of their respective lots, at the apportioned rents mentioned in the particulars. Such underleases shall contain all necessary covenants for indemnifying the several purchasers in respect of the performance of the covenants or payment of apportioned parts of the rent in respect of any other lots than their own, and for securing the payment of such apportioned parts of the rent, and performance of the covenants by the several purchasers in respect of their own lots; and each underlease, and a counterpart thereof for delivery to the lessor, shall be prepared, engrossed, and stamped by and at the expense of the purchaser who is to be lessee thereunder, and shall be executed by the lessor and lessee respectively, and shall contain all proper covenants by them, having regard to the form of the principal lease. And the lessor shall give to the underlessee an acknowledgment of his right to production and delivery of copies of the principal lease, and of any documents relating thereto retained by the lessor, and an

Form of conveyance of leaseholds sold in lots: purchaser of largest lot to take assignment and give underleases to other purchasers (*m*).

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power relates to both registered and unregistered land the filing must be duplicated, and the original, if filed, must be filed at the Central Office.

(*m*) Another plan is to make one purchaser, selected by the vendors, take an assignment of the lease subject to underleases previously granted by the vendors to the other purchasers: see Key & Elph., 12th ed., vol. i., "Special Conditions," IV. "Leaseholds," Form 14; and see note (*d*), *ibid.* Another mode is for all the purchasers to take assignments as in Form 13. Or lastly, where the concurrence of the original lessor can be obtained the lease may be surrendered, and a fresh lease at an apportioned rent granted to each of the purchasers.

Other modes of conveying leaseholds sold in lots.

XI. CONVEYANCE—APPORTIONMENT OF RENTS.

undertaking for safe custody thereof. And if any one of the said five lots remains unsold the vendors may, at their option, stand for the purposes of this condition in the place of the purchaser of the largest part in value.

Form of conveyance of leaseholds sold in lots: purchasers to take assignments and give mutual powers of distress, &c. (*n*).

13. Lots 1 and 2 being held under one lease at an entire rent, the purchasers of those lots shall take assignments of their respective lots at the apportioned rents mentioned in the particulars, and shall thereby enter into mutual covenants for payment of their respective proportions of the rent and performance of the covenants and conditions of the original lease, and shall give to each other mutual powers of distress and entry as an indemnity against such respective proportions of rent and breach of such covenants and conditions. If either lot shall remain unsold the vendor shall stand in the place of the purchaser of the unsold lot for the purposes of this condition.

Covenants not to carry on business so as to inconvenience adjoining occupiers.

14. The conveyance shall contain proper covenants by the purchaser not to use, or permit or suffer to be used on the property conveyed any engine or shafting or machinery so or in such manner as to cause or occasion any noise or vibration which shall be audible or perceptible on any part of the adjoining premises of the vendors, and not to place, or permit or suffer to be placed, against or within ten feet of the party wall between the said property and the said adjoining premises, any boiler or any flue connected with a furnace, or any steam-engine or gas-engine or other engine of the like nature, or any shafting or machinery connected with any such engine, and not to carry on, or permit or suffer to be carried on, upon the said property any noisy, noisome, or offensive trade or business, or do, or permit to be done thereon, any act that shall in anywise prejudice or be an annoyance (*o*) to the said adjoining

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(*n*) As to these powers see L. P. A. 1925, s. 189.

Restrictive covenants.

(*o*) See *Tod-Heatly* v. *Benham*, 40 Ch. D. 80. As to when and how restrictive covenants may be annexed to the land, see *Renals* v. *Cowlishaw*, 9 Ch. D. 125; *Reid* v. *Bickerstaff*, *sub. tit. Ives* v. *Brown*, [1919] 2 Ch. 314; and *Chambers* v. *Randall*, [1923] 1 Ch. 149; and K. & E., 12th ed., vol. i., "Special Conditions of Sale," XII. "Restrictions," note (*a*); and see L. P. A. 1925, ss. 78, 79, and 80.

Covenants made after 1925 will not affect the land in the hands of a purchaser of a legal estate for money or money's worth if they have not been registered before the completion of the purchase as land charges under the L. C. A. 1925, s. 13 (2); and see sect. 10 (6), *ibid.*, as to

premises, or the owners or occupiers thereof, for the time being, and not to execute any deed relating to the said property unless the same contains a reference to such covenant.

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15. Every purchaser shall, within one month after being let into possession of the plot purchased by him, make and afterwards maintain a sufficient boundary fence to his plot, and also on the side [*or*, sides] of his plot, marked "T" on the sale plan, such fences to be not less than four feet six inches or more than six feet in height; in case any such fence shall not be duly made and maintained, the owner or owners, or either of them, for the time being of the land immediately adjoining that side of the plot in respect of which such default shall have happened may enter upon such plot, and make and repair such fence, and recover the expenses thereby incurred from the said defaulter. In case of dispute the opinion of the vendor's surveyor as to the sufficiency of any such fence shall be decisive. No house shall be erected which shall be of less value than £—— for a detached house, or £—— for a pair of houses. The value of a house shall be taken to be its first costs in materials and cost of labour and construction only. Every house to be erected upon any portion of the land shall be used or occupied as a private dwelling-house only, and no other erection shall be built upon any plot, except outbuildings or offices to such dwelling-houses, without the consent in writing of the vendor and his assigns and successors in title and the persons deriving title under him or them. The conveyance to each purchaser at the present sale shall contain covenants by the purchaser to observe the above stipulations, but no covenants shall be personally binding on any purchaser after his estate and interest in the land to which the covenants relate shall have ceased (*q*). No purchaser of any lot sold at this sale shall be entitled to inquire whether this present condition has been complied with by the purchaser of any other lot, or to delay completion of his

Building conditions (*p*).

Fences.

Houses.

Conveyance to contain covenants to observe stipulations.

registration in Yorkshire. Notice of restrictive covenants registered at the Land Registry in respect of registered land takes the place of registration as a land charge in regard to registered land.

Restrictive covenants made before 1926 bind purchasers who have notice.

(*p*) For other stipulations, see *ante*, p. 238.

(*q*) See *Williams* v. *Hathaway*, 6 Ch. D. 544, where the covenant was limited; and *Pollock* v. *Rabbits*, 21 Ch. D. 466, where it was unrestricted.

XI. CONVEYANCE—APPORTIONMENT OF RENTS.

purchase on the ground that any other lot or lots remain unsold, or that the sale thereof has not been completed.

Roads.

16. Every purchaser shall within —— calendar months after the day of sale, at his own expense, with proper materials and in a workmanlike manner, make and form into a road fit for carts, waggons and carriages, such part or parts of the lot or lots purchased by him, as is or are in the sale plan delineated as part or parts of a projected street or projected streets, and shall thereafter, until the same shall be adopted as a public highway, at his own expense, repair and maintain the same with proper materials and in good condition, so as to be fit for use as aforesaid. And every person passing to or from any of the lots, or any part thereof respectively, shall at all times after the day of the sale have the right, with or without carts, waggons, carriages, or other vehicles (however propelled), horses or other animals, to pass and repass over all the said projected streets or the sites thereof respectively, and the several conveyances shall be made subject to the liabilities and rights created by or mentioned in this condition. But no purchaser shall require the production of, or investigate or make any objection or requisition in respect of the title to any part of any projected street, except such as is comprised in his own lot or lots; and the vendors shall not be bound or concerned to enforce any such liabilities or rights as aforesaid, further or otherwise than by requiring every such conveyance to be made subject as aforesaid. If any of the lots be not sold at this sale the vendors shall not, for the purposes of this condition, stand in the place of a purchaser of such lot or lots, so as to be bound to make or maintain part of any such projected street or streets as aforesaid, but the purchasers of the lots sold shall have the same rights of passage over the sites of such projected streets being unsold, as they would have had if such sites had been sold.

Roads.

17. The respective purchasers of lots 1, 2 and 3 are to covenant in their conveyances to make the road referred to in the particulars of those lots respectively, but no purchaser of any of those lots shall be entitled to defer completion of his purchase until the sales of the others of such lots are completed.

Indemnity to vendor against rents, &c. in lease.

18. The purchaser shall indemnify the vendors and the estate of their testator against the several rents, covenants, agreements, and obligations, to which the leasehold premises respectively are subject, and in case the vendors shall deem it expedient that such

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indemnity be provided for by the execution and delivery of counterparts of the assignments, or any of them, the purchaser shall, at his own expense, execute and deliver such counterparts, but the cost of engrossing and stamping such counterparts will be borne by the vendors.

Conveyance to contain covenant to allow adjoining occupier to enjoy rights.

19. The property is sold subject to the right of the owner of the adjoining messuage and premises, No. —, —— Street, and her assigns, at all times hereafter, to the full and free use and enjoyment of the rain-water gutters and pipes from the eaves at the back of the said messuage and premises, and of all the drainage and water supply leading from and to the lavatory in the said last-named messuage to the messuage and premises now offered for sale, with the full and free right to enter on the said messuage and premises now offered for sale, for the purpose of opening the ground, drains, and pipes, and repairing such drains, pipes, drainage, and water supply, when and as often as shall be required by such owner and her assigns. The purchaser shall in his conveyance covenant with the present owner to observe the stipulations mentioned in this condition relating to the said drainage, water supply, and other matters.

XII. Custody of Deeds and Documents of Title (*r*).

Custody of muniments of title where some are retained by the vendor (*x*).

1. Such of the muniments of title in the vendor's possession as relate exclusively to the property sold, will be delivered to the purchaser. The vendor will retain all other deeds and documents, and will give to the purchaser the statutory acknowledgment of the right to production and delivery of copies, and undertaking, *or, on a sale by trustees or other fiduciary vendors* [but not any undertaking or covenant] for safe custody thereof, any such acknowledgment [and undertaking] to be prepared by and at the expense of the purchaser.

The same, on sale of property in several lots.

2. Deeds and documents of title relating to the premises sold, and also to other property or matters, shall be retained by the vendor, who shall give the usual acknowledgment and undertaking, *or, on a sale by trustees or other fiduciary vendors* [but not any undertaking (*s*)], relating thereto. Documents of title,

(*r*) See L. P. A. 1925, s. 45.

(*s*) On a sale by trustees the acknowledgment, but not the undertaking, will be given.

XII. CUSTODY OF TITLE DEEDS.

other than documents of record relating exclusively to the premises sold shall, if in the vendor's possession and affecting one lot only, be delivered to the purchaser of such lot, but if affecting two or more lots shall be delivered to such of the purchasers as the vendor may think fit, *or* "to the purchaser of lot 1," who shall give the usual and proper acknowledgment and undertaking relating thereto to the purchaser of the other lot or lots to which such documents relate; but the said documents may be retained by the vendor, if he thinks fit, without acknowledgment or undertaking, until all the lots to which they relate have been sold; no purchase shall be delayed on account of anything under this condition. Every acknowledgment or undertaking hereunder shall be prepared by and at the expense of the purchaser requiring the same, but shall be perused and executed by the party giving the same at his own expense; and no purchaser shall object to the absence of any sufficient covenant, acknowledgment, or undertaking, or to any existing covenant, acknowledgment, or undertaking with reference to such documents.

Custody of mortgage deed until the debt is paid off.

3. The mortgage deed under the [implied] power of sale in which the property is offered for sale, comprises other land not now offered for sale. This deed will be retained by the vendor until the whole of his mortgage debt is discharged, when it will be handed over to the purchaser at the present sale, who shall in the meantime be entitled, at his own expense, to production of and copies of such mortgage deed, but not to any covenant for, or any acknowledgment of, the right of the purchaser to production of the deed, nor any undertaking for safe custody thereof.

Condition negativing purchaser's right to production, &c.

4. No purchaser shall be entitled to the possession or production, or to any covenant, acknowledgment, or undertaking for the production or furnishing copies or safe custody of any will or other muniment of title which is on record, or of any muniment of title not in the vendors' possession, of which an attested or other verified copy can be procured by and at the expense of the purchaser, or to any acknowledgment or undertaking in respect of any such will or muniment.

Retention of settlement by trustees.

5. The vendors reserve the right of retaining in their possession the settlement of which they are trustees, and any other documents in their possession or power relating to their trust, and will in that case give to the purchaser a statutory acknowledgment of his right to the production of the documents so retained, and

to delivery of copies thereof, but not any undertaking or covenant for safe custody thereof. XII. CUSTODY OF TITLE DEEDS.

6. Such deeds or documents relating to the property now sold [lot 2] as the vendors are now under a covenant or obligation to produce to the owner or owners of other property will, on the sale of all the vendors' property therein comprised, be handed over to the purchaser [of lot 2], who shall give to such owner or owners the usual acknowledgment of right to production and undertaking for safe custody of the said deeds; but if such owner or owners are not bound to accept, and will not accept, such substituted acknowledgment and undertaking, the purchaser [of lot 2] shall take upon himself the vendors' liability under such covenant or obligation, and shall, if required, enter into a covenant with the vendors to carry out such covenant or obligation as aforesaid, and to indemnify the vendors against all liability thereunder. All instruments necessary to carry out this condition to be prepared and executed by and at the expense of the purchaser, save only as to the expense of the perusal and execution by or on behalf of the vendors. Purchaser to enter into substituted covenants with owners of other property for production of deeds delivered to him (*t*).

XIII. REGISTERED LAND.

PRELIMINARY NOTE.

VERY considerable changes in the law of registration have been effected by the Land Registration Act, 1925.

By sect. 2 (1) of the Act, after 1925, estates capable of subsisting as legal estates shall be the only interests in land in respect of which a proprietor can be registered, and all other interests in registered land (except overriding interests and interests entered on the register at or before such commencement) shall take effect in equity as minor interests. As regards any interests (except undivided shares in land) entered on the register before Registered land.

(*t*) This condition will only be required where the vendor's liability will remain after parting with the deeds.

January 1st, 1926, which are not legal estates, any necessary rectification shall be made on the first dealing with such interests.

"Legal estate" has the same meaning as in the Law of Property Act, 1925.

Registered proprietor.

By sects. 4 and 8 of the Land Registration Act, 1925, the following may be registered as proprietors—(a) Any estate owner holding an estate in fee simple (including a tenant for life, statutory owner, personal representative, or trustee for sale), whether subject or not to incumbrances; (b) and any other person entitled to require to have vested in him a legal estate in fee simple, but not a mortgagee where there is a subsisting right of redemption, or a person who has merely contracted to buy land, and the same persons are entitled to be registered as proprietors of leasehold interests in land if they hold or are entitled to have vested in them a leasehold interest for a term of years absolute of which more than twenty-one years are still unexpired. (Land Registration Act, 1925, s. 8.)

Sect. 110 regulates the sale or other disposition of registered land to a purchaser other than a lessee or chargee as follows:—

Provisions as between vendor and purchaser.

(1) The vendor shall, notwithstanding any stipulation to the contrary, at his own expense furnish the purchaser with an authority to inspect the register, and, if required, with a copy of the subsisting entries in the register and of any filed plans and copies or abstracts of any documents or any part thereof noted on the register so far as they respectively affect the land to be dealt with (except charges or incumbrances registered or protected on the register which are to be discharged or overridden at or prior to completion):

Provided that—

(a) unless the purchase-money exceeds one thousand pounds the costs of the copies and abstracts of the said entries, plans and documents shall, in the absence of any stipulation to the contrary, be borne by the purchaser requiring the same;

(b) nothing in this section shall give a purchaser a right to a copy or abstract of a settlement filed at the registry:

(2) The vendor shall, subject to any stipulation to the contrary, at his own expense furnish the purchaser with such copies, abstracts and evidence (if any) in respect of any subsisting rights and interests appurtenant to the registered land as to which the register is not conclusive, and of any matters excepted from the effect of registration as the purchaser would have been entitled to if the land had not been registered:

(3) Except as aforesaid, and notwithstanding any stipulation to the contrary, it shall not be necessary for the vendor to furnish the purchaser with any abstract or other written evidence of title, or any copy or abstract of the land certificate, or of any charge certificate:

(4) Where the register refers to a filed abstract or copy of or extract from a deed or other document, such abstract or extract shall as between vendor and purchaser be assumed to be correct, and to contain all material portions of the original, and no person dealing with any registered land or charge shall have a right to require production of the original, or be affected in any way by any provisions of the said document other than those appearing in such abstract, copy or extract, and any person suffering loss by reason of any error or omission in such abstract, copy, or extract, shall be entitled to be indemnified under this Act:

(5) Where the vendor is not himself registered as proprietor of the land or the charge giving a power of sale over the land, he shall, at the request of the purchaser and at his own expense, and notwithstanding any stipulation to the contrary, either procure the registration of himself as proprietor of the land or of the charge, as the case may be, or procure a disposition from the proprietor to the purchaser:

(6) Unless the certificate is deposited at the registry the vendor shall deliver the land certificate, or the charge certificate, as the case may be, to the purchaser on completion of the purchase, or, if only a part of the land comprised in the certificate is dealt with, or only a derivative estate is created, he shall, at his own expense,

produce, or procure the production of, the certificate in accordance with this Act for the completion of the purchaser's registration. Where the certificate has been lost or destroyed, the vendor shall, notwithstanding any stipulation to the contrary, pay the costs of the proceedings required to enable the registrar to proceed without it:

(7) The purchaser shall not, by reason of the registration, be effected with notice of any pending action, writ, order, deed of arrangement or land charge (other than a local land charge) to which this sub-section applies, which can be protected under this Act by lodging or registering a creditor's notice, restriction, inhibition, caution or other notice, or be concerned to make any search therefor if and so far as they affect registered land.

This sub-section applies only to pending actions, writs, orders, deeds of arrangement and land charges (not including local land charges) required to be registered or re-registered after the commencement of this Act, either under the Land Charges Act, 1925, or any other statute registration whereunder has effect as if made under that Act.

In the case of possessory title, the title down to and including the title of the proprietor entered at the date of first registration must be furnished in the ordinary way and continued beyond that date as regards any adverse estate, right, or interest which may have been disclosed by the earlier title.

Though the legal estate cannot be dealt with off the register, any estate or interest in or relating to the land which is not capable of registration may be dealt with off the register, and subject to sects. 101 to 105 and 109 of the Land Registration Act such estates or interests will affect or bind the registered land. The rights dealt with or accruing will become minor interests, defined by sect. 3 (xv) of the Land Registration Act, 1925, and in the proper cases may be protected by various registrable acts such as notices, cautions, inhibitions, or restrictions. (Sect. 101 (3), *ibid.*) In the absence of such protection minor interests will become void as against a purchaser for valuable consideration after he has been registered a proprietor. Overriding interests, however, bind registered land, without any entry on the

register. These interests are defined by sect. 3 (xvi) of the Land Registration Act and are enumerated by sect. 70, *ibid.*

Dispositions of registered land.

Any disposition of registered land is subject (a) to the incumbrances and other entries, if any, appearing on the register; (b) unless the contrary is expressed in the register, to the overriding interests, if any, affecting the estate created or transferred.

Registration of conveyance compulsory on sale of unregistered land in a compulsory area.

A conveyance executed after 1925 of unregistered land situate within a compulsory area will be void as far as regards the legal estate unless registered within two months of its date. The same applies to leases and assignments of leases of which not less than forty years are unexpired. (Land Registration Act, 1925, s. 123.)

Mortgages.

In addition to registered charges, security for money may be effected by legal or equitable mortgages in the ordinary way, or by charge by way of legal mortgage. (Land Registration Act, 1925, s. 106 (1).) The mortgage must be protected by a caution or it will be capable of taking effect only in equity and of being overriden as a minor interest. (Land Registration Act, 1925, s. 106 (4).)

By sect. 75 of the Land Registration Act, 1925, the Limitation Acts are to apply to registered land as if it were not registered, except that where the title of the registered proprietor would be extinguished if the land were not registered he is to be deemed to hold the land as trustee for the adverse claimant without prejudice to any estate or interest which is not statute barred, and the claimant may apply for registration.

Sect. 50 of the Land Registration Act, 1925, enables notice of the existence of restrictive covenants to be entered on the register, and by sect. 40 land already registered may be subjected to such covenants.

Easements.

As to how easements over registered land can be created, and as to whether an easement annexed to registered land passes by a registered transfer of the land, see K. & E., 12th ed., Vol. I., "Conditions of Sale," Preliminary Note.

Other points arising on the sale of registered land, or of unregistered land in a compulsory area, appear in the notes to the following forms and to various precedents in this volume.

ON SALE OF REGISTERED LAND.

SPECIAL CONDITIONS ON SALE OF REGISTERED LAND (*u*).

Abstracts: Freeholds registered with an absolute title.

1. The vendor [A. B., of ——], is registered as proprietor of the property described in the particulars (*x*), with absolute title under the Land Registration Act, 1925. The vendor will furnish the purchaser with a copy of the subsisting entries on the register relating to the property and to a copy of or sufficient extract from the filed plan [*or*, general map (*y*)] [and to a supplementary abstract commencing, &c., deducing the title to the incumbrances, notices of which were entered on the register [at first registration] and not cancelled or withdrawn (*z*)], and no further abstract shall be required.

Freeholds with qualified title.

2. The vendor [A. B., of ——], is registered as proprietor of the property described in the particulars, with qualified title under the Land Registration Act, 1925, excepting from the effect of such registration any estate, right, or interest arising before the —— day of —— [or, "under an indenture dated the —— day of ——, being, &c."] [*state shortly the nature of the instrument*]. The abstract of title shall consist of a copy of the subsisting entries in the register [*continue as in Form* 1 *down to* "*map*"], together with a supplemental abstract of the prior title commencing with, &c. [*or*, "of the title under the said indenture"] [and a further abstract commencing with, &c., of the title to the incumbrances entered on the register at the first registration, and not since cancelled or withdrawn] [*add special conditions as to unregistered title, if necessary*].

Freeholds with possessory title.

3. The vendor [A. B., of ——], is registered as proprietor of the property, with possessory title under the Land Registration Act, 1925. (First registration dated —— day of ——.) The title shall consist of a copy [*as in Form* 1 *down to* "*map*"] and an abstract of the prior title commencing, &c. [*add special conditions as to title and evidence, if necessary*].

(*u*) As to the evidence of title which a purchaser of registered land may require, see L. R. A. 1925, s. 110, set out *ante*, p. 298.

Mines and minerals.

(*x*) If mines or minerals are excepted from the sale the particulars should show the nature and extent of the exception. As to registering the proprietorship of mines and minerals severed from the land, see L. R. Rules, 53. For the forms of transfer of land excepting or specifying mines and minerals, see L. R. Rules, 111 to 113, Forms 24—30.

(*y*) See L. R. A. 1925, s. 110.

(*z*) See L. R. A. 1925, ss. 5 and 110.

ON SALE OF REGISTERED LAND.

Leaseholds with absolute or good leasehold title (*a*).

4. The vendor [A. B., of ——], is registered as proprietor of the leasehold land described in the particulars, with absolute [good leasehold] title under the Land Registration Act, 1925. The vendor will furnish [*continue as in Form* 1 *down to* "*map*"] [and a supplemental abstract commencing with, &c., and showing the title to the incumbrances entered on the register at the first registration, and not since cancelled or withdrawn].

Leaseholds with qualified title (*b*).

5. The vendor [A. B., of ——], is registered as proprietor of the leasehold land described in the particulars, with qualified title under the Land Registration Act, 1925, excepting from the effect of such registration any estate, right, or interest arising before the —— day of —— [*or,* "under an indenture dated, &c."]. The abstract of title shall consist of a copy of the subsisting [*continue as in Form* 1 *down to* "*map*"], together with a supplemental abstract of the prior leasehold title commencing, &c. [*or,* "of the title under the said indenture"] [and a supplemental abstract commencing, &c., of the title to the incumbrances entered on the register at the first registration, and not since cancelled or withdrawn] [*add special conditions as to unregistered title, if necessary*].

Leaseholds with possessory title.

6. The vendor [A. B., of ——], is registered as proprietor of the leasehold land described in the particulars, with possessory title under the Land Registration Act, 1925. (First registration dated the —— day of ——, 18—.) The title shall consist of a copy [*continue as in Form* 1 *down to* "*map*"] and an abstract of the prior leasehold title commencing, &c. [*add special conditions, if necessary*].

Vendor holding under an unregistered assurance (*c*).

7. In the year —— A. B., of ——, who is the registered proprietor, with a possessory ["absolute" *or* "qualified"] title of

(*a*) As to registration of land with leasehold title, "absolute," "good," or "possessory," and as to the effect of such registration, see L. R. A. 1925, ss. 8, 9 (3), 10 and 11.

(*b*) See L. R. A. 1925, s. 12.

(*c*) As to the effect of an assurance by an unregistered deed after land has been placed on the register, see *Capital and Counties Bank, Ltd.* v. *Rhodes,* [1903] 1 Ch. 631; *Re Vos and Saunders' Contract,* [1911] 1 Ch. 42. See sect. 110 (5) of the L. R. A. 1925, as to vendor holding under an unregistered title being bound to procure registration of himself or transfer to the purchaser; and see also sect. 123 of the L. R. A.

ON SALE OF REGISTERED LAND.

the land described in the particulars, conveyed the same to the vendor by an unregistered assurance protected by an entry on the register. The vendor will, if required, upon completion, at his own expense, procure the registration of himself as proprietor, or a transfer from the said A. B. to the purchaser.

Sale by proprietor of registered charge (*d*).

8. The vendor is selling as the registered proprietor of a charge with power of sale in exercise of the power conferred by the Law of Property Act, 1925.

Where the vendor has the right to be registered (*e*).

9. The vendor will, at his own expense, upon completion procure himself to be registered as proprietor of the land described in the particulars, or show to the satisfaction of the registrar his right to be so registered.

Cancellation or withdrawal of notices or entries on the register (*f*).

10. Where a notice or entry on the register has been cancelled or removed from the register the estate, liability, rent, right, interest, incumbrance, or covenants or conditions intended to be protected by such notice or entry shall be assumed to have ceased and no longer to affect the land.

Easements, &c.

11. The vendor shall not be required to show any title to easements, profits *à prendre,* conditions, or covenants for the benefit of the land noted in the property register.

Priority notice (*g*).

12. As soon as the title is accepted, the vendor will, at the request and cost of the purchaser, lodge at the Land Registry a notice accompanied by the land certificate, reserving priority to the transfer to be made to the purchaser.

Provisional registration (*h*).

13. Upon the written request of any purchaser who has accepted the title, the vendor will concur with him, at his expense, in applying for his provisional registration as proprietor, and will, on payment of the balance of the purchase-money within the period specified in the application, hand to such purchaser the land certificate of the property [lot or lots purchased by him].

Completion whereliability attaches to

14. Within —— days after completion, the purchaser shall be registered as proprietor of the property purchased by him, and

(*d*) See L. R. A. 1925, s. 34 (1); and L. P. A. 1925, s. 104.

(*e*) L. R. A. 1925, s. 110 (5).

(*f*) As to cancellation of entries by the Registrar, see L. R. R., *passim*.

(*g*) As to priority notices, see L. R. R. 71.

(*h*) The provisional registration of an intended transferee as proprietor may be made upon the joint application of the registered proprietor and an intended purchaser of the whole or part of the land comprised in a title: see L. R. R. 138.

ON SALE OF REGISTERED LAND.

shall produce to the vendor the land certificate as evidence that he, the purchaser, has been so registered.

15. On payment of the balance of the purchase-money, the [each] purchaser shall be entitled to a proper transfer of the property [lot or lots purchased by him], and to the land certificate and to certificates of registered charges discharged out of the purchase-money [affecting such property [lot or lots] only, and also to have the land certificate and the certificate of any registered charges affecting such property [lot or lots] and other property deposited at the Registry to enable the purchaser to be registered free therefrom (*i*)], and also to have an application signed by all necessary parties for the withdrawal of any restriction affecting the property [lot or lots], such transfer and assurance to be prepared by and at the expense of the purchaser, or the purchaser shall be entitled at his option to require the vendor to consent to any application made by the purchaser to be registered, or to have registered in his stead, any nominee or nominees as proprietor or proprietors under the Land Registration Act, 1925, of the property. After completion and until registration as proprietor the purchaser [of any lot] shall have the same rights as if the certificate [and certificate of charge] had been deposited with him to secure his purchaser's lien.

the holder of the legal estate.

Completion by registered transfer only.

16. Each purchaser who shall sign the subjoined form of application for provisional registration (*k*), and the subjoined memorandum of his election to accept the title without objection or

Free conveyance.

(*i*) Where any outstanding estate or interest is to be got in, add—
"And the purchaser shall be entitled to an assurance from the vendor and all other necessary parties (if any) of any incumbrances, estates, interests, rights or powers which will not be destroyed by the transfer and registration of the purchaser."

Where covenants by the purchaser are to be given and implied, say—
"And the purchaser shall at his own expense execute and deliver to the vendor a deed whereby the purchaser shall covenant with the vendor [to indemnify him against the covenants contained in the lease mentioned in the particulars and] to observe and perform the stipulations contained [or mentioned] in clause of [the schedule to] these conditions."

(*k*) See *ante*, p. 304, note (*h*).

ON SALE OF REGISTERED LAND.

requisition, shall, on payment of the balance of the purchase-money within —— days after the sale, be entitled to a land certificate showing him as the proprietor of the lot or lots purchased by him, such certificate to be delivered to him free of all expenses except the *ad valorem* duty on the registered transfer.

After completion, and until, &c. [*continue as in Form* 15.]

Part of the purchase-money to remain on mortgage (*l*).

17. Upon the written request of the [any] purchaser to the vendor's solicitors, made not less than —— days before completion, the vendor will lend to him such sum not exceeding two-thirds of the purchase-money as may be named in the request, such loan to bear interest at the rate of —— per cent. per annum, and to be secured on the property [lot or lots purchased by him] by [a mortgage by deed off the register, to be protected by a caution (*m*) in specially prescribed form under sect. 106 of the Land Registration Act, 1925] a registered charge, such instrument or instruments to be prepared by the vendor's solicitors [at the purchaser's expense], and to contain all reasonable provisions. Immediately after completion the purchaser shall apply for the registration of himself as proprietor, and leave with the registrar the said instrument of charge duly executed for registration [*or*, the said mortgage duly executed, and obtain or allow the vendor's solicitors [at the expense of the purchaser] to obtain the said caution].

CONTRACTS FOR SALE.

PRELIMINARY NOTE.

Stamps.

SUBJECT to the provisions of sect. 59 of the Stamp Act, 1891, a contract for sale, if under hand, bears a 6*d*. stamp (*n*); if by deed, a 10*s*. stamp (*o*). (See *tit.* "Agreement" and "Deed" in the first

(*l*) For forms of mortgage, see Mortgages, Vol. II.

(*m*) See *ante*, p. 301.

(*n*) By sect. 22 of the Stamp Act, 1891, the duty of 6*d*. may be denoted by an adhesive stamp, to be cancelled by the person by whom the agreement is first executed.

(*o*) Except where it relates solely to the property of a bankrupt, in which case, whether under hand or by deed, it is exempted from stamp duty by sect. 148 of the Bankruptcy Act, 1914.

schedule to the Act.) The above mentioned Act enacts by sect. 59, sub-sect. (1) that any contract for the sale of any equitable estate or interest in any property, or for the sale of any estate or interest in any property except (1) land, (2) property out of the United Kingdom, (3) goods, (4) marketable securities, or (5) ships, shall be charged with *ad valorem* duty as if it were a conveyance; but by sub-sect. (4), where the contract is stamped with the 6*d*. or 10*s*. stamp (as the case may require), it shall be regarded as duly stamped for the purpose of proceedings for specific performance or damages; and further (sub-sect. (5)), if the conveyance is presented for stamping with the *ad valorem* duty within six months after execution of the contract, the conveyance is to be stamped accordingly, and the contract deemed to be duly stamped. By sub-sect. (3), where *ad valorem* duty has been paid on the contract, the Commissioners shall either denote such payment on the conveyance or shall transfer the *ad valorem* duty thereto; and by sub-sect. (6), if the contract is annulled, *ad valorem* duty paid thereon is to be returned.

Previously to registration of a "first proprietor of any land," it is the duty of the Registrar to ascertain that all stamp duties have been paid. (See Land Registration Act, 1925, s. 14 (3).) Where a transaction is carried out by an instrument off the register as well as by a registered instrument, the stamp is to be affixed to the unregistered instrument, and the registered instrument will bear no stamp. (L. R. R. 94.) See further, as to stamp duty, L. T. R. 95.

As to registration of an estate contract, see *ante*, p. 227, note (*o*), and as to entry of cautions in respect of the contract, see Land Registration Act, 1925, ss. 53 to 56.

I. SALE OF FREEHOLDS.

PRECEDENTS.

I. AGREEMENT *for the* SALE *of* FREEHOLDS (*including lands formerly copyhold*) *with the usual* STIPULATIONS.

Parties.

AN AGREEMENT (*p*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor") (*q*), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part; WHEREBY IT IS AGREED as follows:—

Agreement for sale and purchase.

Parcels (*r*).

1. The vendor shall sell, and the purchaser shall purchase, for the sum of £——, ALL THOSE several pieces or parcels of land, situate, &c. [*parcels*], and which said premises hereby agreed to be sold are more particularly described in the schedule hereto and are delineated in the plan annexed hereto and therein coloured pink, with the appurtenances thereof, for an estate in fee simple in possession, free from incumbrances except as hereinafter mentioned (*s*).

Timber or fixtures to be taken at a valuation.

2. [*Provision as to valuation of timber, or fixtures, if any, see Special Conditions, VII.*, ante, *p.* 245.]

(*p*) Stamp, 6*d*.

(*q*) Where the agreement is signed by an agent for the vendor, say, "BETWEEN [A. B.], of, &c., as agent for and on behalf of [*vendor*], of, &c. (hereinafter referred to as 'the vendor'), of the one part."

(*r*) See *ante*, p. 219, note (*q*).

Schedule of incumbrances.

(*s*) *Or*, "except such as are mentioned in the schedule hereto."

Fee farm rent.

Or, "a fee farm rent which was incidental to the formerly copyhold manor of ——, and is now payable to the lord of the said manor under the provisions of the Law of Property Act, 1922, and the Law of Property (Amendment) Act, 1924, and the Law of Property Act, 1925."

See also *ante*, pp. 219 and 220, and notes (*q*) and (*t*).

Mortgage.

Or, "a mortgage of the said premises by indenture dated the —— day of ——, 19—, and expressed to be made between [*parties*] for securing the payment of the sum of £—— and interest only excepted: And which sum of £—— and the interest thereon from the —— day of —— now next, it is hereby agreed shall be paid and discharged by the purchaser, who shall indemnify the vendor therefrom."

Or, "other than and except the several leases or tenancies mentioned in the schedule hereto as affecting the same or parts thereof."

3. The purchaser shall pay a deposit of £—— on the execution of this agreement. The remainder of the purchase-money shall

Payment of deposit (*t*).

(*t*) As to the payment of a deposit, see *Ellis* v. *Goulton*, [1893] 1 Q. B. 350; and see *ante*, p. 194, note (*d*). If part of the purchase-money is to remain on mortgage, substitute for clause 3 in the text the following provisions:—

Part of purchase-money to remain on mortgage.

"The purchase shall be completed on the —— day of —— next, at the office at ——, of Messrs. [A. and B.], the vendor's solicitors. The said purchase-money shall be paid or secured to the vendor as follows: the sum of £—— part thereof shall be paid by way of deposit on the signing of this agreement, the sum of £—— further part thereof, with interest thereon (in the event of delay in completion) at the rate of —— per cent. per annum, until the purchase is actually completed, shall be paid upon the execution of the assurance to the purchaser, and the remainder thereof, with interest thereon at the rate aforesaid, from the time fixed for completion shall be secured on the property by a mortgage by demise [charge by way of legal mortgage], to contain such powers and provisions, and to be in such form as the vendor shall require, and to be prepared by the vendor at the purchaser's expense, and to be executed immediately after the assurance to the purchaser."

In the case of registered land, see *ante*, p. 306. If the purchase-money is to be paid by instalments, after the provision for completion continue as follows:—

Purchase-money to be paid by instalments. (*u*).

"The purchase-money with interest thereon, or on the unpaid part thereof, at the rate of —— per cent. per annum, shall be paid by half-yearly instalments of £—— each on the —— day of —— and the —— day of —— in each year, the first of such instalments [together with the amount of such valuation as aforesaid] to be paid on the —— day of —— next, and with each instalment interest at the rate aforesaid shall be paid on the purchase-money remaining unpaid. PROVIDED that if default shall be made in payment of any instalment of principal or interest for thirty days after the same becomes due, the whole of the purchase-money then unpaid, with interest thereon, shall become immediately payable [and shall be secured on the property by a mortgage, &c., *as above*]."

In the case of registered land the contract should be protected by a caution: see L. R. A. 1925, s. 53, &c.

(*u*) As to the right of a purchaser failing to complete the payments to a return of the instalments, see *Mayson* v. *Clouet*, [1924] A. C. 980.

I. SALE OF FREEHOLDS.

be paid [together with the amount of such valuation as aforesaid] to the vendor or as he shall direct, on the —— day of —— next, at the office at ——, of Messrs. ——, the vendor's solicitors, at which time and place the purchase shall be completed. If from any cause other than the vendor's wilful default, the completion shall be delayed beyond the said —— day of ——, the purchaser shall pay interest on [the balance of] his purchase-money [and on the amount of such valuation as aforesaid] at the rate of —— per cent. per annum from that day until actual payment thereof. But this provision is without prejudice to the vendor's rights under any other clause of this agreement.

Possession and outgoings.

4. Possession or receipt of the rents and profits shall be retained and all outgoings not payable by the tenant shall be discharged by the vendor up to the —— day of —— next, as from which day possession or receipt of rents and profits shall be taken, and outgoings shall be discharged by the purchaser, such rents, profits, and outgoings to be apportioned, if necessary. But the purchaser shall not be let into actual possession of the property until actual completion of the purchase (*x*).

Production of leases, &c. (*y*).

5. Counterparts or copies of the leases or written agreements with the tenants have been produced to the purchaser, and he shall be taken to have full notice of the contents thereof, and of the terms of the tenancies, and of the rights affecting the property, notwithstanding any incomplete or inaccurate statement thereof herein, and of the state of the property as to repairs, insurance, party walls, and all other matters.

Reservations and restrictions.

6. The property is sold subject to the reservation of mines, &c. contained in an indenture, &c. [*see Special Conditions, IX.*, ante, *p.* 280] (*z*).

Delivery of abstract.

7. The vendor shall within —— days from the date hereof deliver to the solicitors of the purchaser an abstract of his title to the premises, commencing with an indenture, being a conveyance on sale dated, &c. [*or as the case may be*] (*a*) [*add special conditions as to title, evidence and other matters, if required*].

(*x*) As to insurance, see *ante*, p. 279, cl. 2.

(*y*) See *ante*, p. 220, notes (*r*), (*s*).

(*z*) As to the importance of mentioning specifically all rights, easements, &c. known to the vendor, see *ante*, p. 219, note (*q*).

(*a*) See Special Conditions, IV., p. 258; and as to registered land, see Preliminary Note, *ante*, p. 297.

Delivery of requisitions.

7A.—The purchaser shall make in writing and deliver to the solicitors of the vendor his objections and requisitions (if any) arising on the abstract or this agreement within —— days after delivery thereof; And all objections and requisitions which shall not be made and sent as aforesaid within the time specified, shall be deemed to have been waived, and for this purpose time shall be of the essence of the contract (*b*).

Requisitions insisted on may entitle vendor to rescind (*c*).

8. In case the purchaser shall make any objection to, or requisition on the title (not being necessary for the enforcement of any right under sects. 42 or 125 of the Law of Property Act, 1925), which the vendor shall from any cause, or on any grounds whatever, be unable or unwilling to answer or comply with, the vendor shall be at liberty (notwithstanding any attempt to answer or comply with such objection or requisition, or any previous or pending negotiation or litigation), at any time upon giving the purchaser not less than —— days' notice in writing to rescind the sale, and unless the objection or requisition shall, in the meantime be withdrawn, the sale shall at the expiration of such notice be annulled; and in that case the vendor shall return the deposit, but the purchaser shall not be entitled to any interest, costs, or compensation, or other payment whatsoever.

Expenses of making copies of deeds, &c., whether in vendor's possession or not, to be borne by purchaser.

9. In addition to all expenses by law made payable by a purchaser (*d*), but not including any expenses which by law are payable by the vendor to the exclusion of the purchaser, notwithstanding any stipulation to the contrary, the purchaser shall bear all expenses of and incidental to making, procuring, verifying, furnishing, producing, and examining all attested, stamped, office, or other copies and abstracts of and extracts from Acts of Parliament, inclosure awards, records, proceedings of Court, court rolls, deeds, wills, probates, letters of administration, and other documents, whether in the vendor's possession or not, and which he may require respectively for whatever purpose the same may be required respectively, and of and incidental to all inquiries, searches, and journeys, incident to any of the purposes aforesaid.

Identity.

10. The purchaser shall admit the identity of the property with

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(*b*) See *ante*, pp. 222 and 223, notes (*z*), (*a*).

(*c*) As to this stipulation, see *ante*, Conditions of Sale, p. 223, notes (*b*) and (*d*).

(*d*) See L. P. A. 1925, s. 45, and sects. 42 and 125.

I. SALE OF FREEHOLDS.

that described in the muniments of title upon the evidence afforded by a comparison of the descriptions contained in this agreement and the said muniments [and a statutory declaration to be made if required at the purchaser's expense that the property has been enjoyed according to the title shown for —— years and upwards prior to the date hereof].

Errors in description not to annul sale, nor entitle parties to compensation (*e*).

11. The admeasurements and descriptions of the property, as given in the said schedule, are believed and shall be assumed to be correct, and the property is sold subject to all chief, quit and other rents, rights of way, water, drainage, and other easements (if any), and to all liabilities to repair and to contribute to the repair of roads, bridges, fences, sewers, drains, and other incidents of tenure and outgoings affecting the same; but if any misstatement, error, or omission shall be found in such admeasurements or descriptions, the same shall not annul the sale, nor shall any compensation be allowed, either to the vendor or purchaser in respect thereof (*f*). [If the purchaser requires the conveyance of the premises to be in accordance with the plan hereto annexed, he shall only be entitled thereto, provided that there be inserted in such conveyance a

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(*e*) This condition can only be relied upon by a vendor seeking to enforce specific performance, as applying to small errors, and will not cover a material deficiency so as to disentitle a purchaser from compensation: *Whittemore* v. *Whittemore,* L. R. 8 Eq. 603; *Jacobs* v. *Revell,* [1900] 2 Ch. 858, where the cases are discussed; *Debenham* v. *Sawbridge,* [1901] 2 Ch. 98; *Re Leyland and Taylor,* [1900] 2 Ch. 625; *Eastwood* v. *Ashton,* [1913] 2 Ch. 39; *Lee* v. *Rayson,* [1917] 1 Ch. 613. The T. A. 1925, s. 13, enables trustees to sell with a similar condition excluding compensation. See also as to this condition, Conditions of Sale, *ante,* p. 221, note (*x*). As to whether compensation can be claimed in the absence of express stipulation after completion of the purchase, see *Joliffe* v. *Baker,* 11 Q. B. D. 255; *Palmer* v. *Johnson,* 13 Q. B. D. 351. If compensation is to be allowed, substitute for this clause the following words after the words "shall not annul the sale":—

"but a reasonable compensation, if demanded in writing before completion, shall be allowed or paid by the vendor or purchaser, as the case may be, the amount thereof to be fixed by two referees to be appointed, the one by the vendor and the other by the purchaser, or by their umpire, pursuant to the Arbitration Act, 1889, whose decision shall be final."

(*f*) *Re Terry and White,* 32 Ch. D. at p. 34; *Re Puckett and Smith,* [1902] 2 Ch. 258.

statement that the verbal description of the premises therein contained shall not be governed, restricted, or enlarged by the said plan in the event of any variance between the description and plan] (*g*).

Completion of purchase and conveyance of the property.

12. Upon payment of the [balance of the] purchase-money [and the amount of such valuation as aforesaid] the vendor and all other necessary parties (if any) will execute a proper conveyance of the premises to the purchaser; such conveyance to be prepared by and at the expense of the purchaser, and the engrossment thereof to be left not less than —— days before the said —— day of ——, for the approval of the solicitors of the vendor at their said office (*h*).

Vendor only to give statutory covenant against incumbrances.

[13. *Provision as to vendor's covenants as trustee mortgage or otherwise in a fiduciary capacity.* (*See* ante, *p.* 224, *f.* 21.)]

Vendor to retain muniments of title relating to other property.

14. The vendor shall retain all deeds and other documents which relate as well to other property as to the property agreed to be sold, and shall give to the purchaser a statutory acknowledgment of the right of the purchaser to production of such deeds and documents, and to delivery of copies thereof [and also a statutory undertaking for the safe custody thereof] (*i*).

On default of purchaser to comply with stipulations, vendor may rescind and resell (*l*).

15. If the purchaser shall neglect or fail to comply with the above stipulations, his deposit money shall, subject to any direction by the Court (*k*), be forfeited to the vendor, who shall be at liberty to rescind the present sale, and resell the property, either by public auction or private contract, at such time and place, and

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(*g*) See *Re Sansom and Narbeth,* [1910] 1 Ch. 741; *Re Sparrow and James,* [1910] 2 Ch. 60; and see also 56 Sol. J. 608; and *Eastwood* v. *Ashton,* [1915] A. C. 900.

(*h*) Where the property is registered land, or situate in a district where registration is compulsory, see *ante,* p. 224, note (*e*). Where the purchase-money is payable by instalments, for the words "Upon payment of the purchase-money" substitute,

"Upon payment of the said first instalment of the purchase-money."

(*i*) Where the vendor is a trustee or mortgagee the words in brackets will be omitted.

(*k*) See L. P. A. 1925, s. 49 (2) and (3).

(*l*) As to this condition, see *Want* v. *Stallibrass,* L. R. 8 Ex. 175; *Daniell* v. *Essex,* L. R. 10 C. P. 538; *Soper* v. *Arnold,* 14 App. Cas. 429; *Jones* v. *Burnell,* (1911) W. N. 153. As to the vendor's right to

I. SALE OF FREEHOLDS.

subject to such conditions as the vendor shall think fit, and the deficiency of price, if any, which shall happen on such resale, and the expenses of and incident to the present sale and such resale shall immediately after such resale be made good and be paid to the vendor by the present purchaser, and in case of non-payment the whole or such part of such deficiency as shall not be paid shall be recoverable by the vendor as liquidated damages.

16. The expressions "vendor" and "purchaser" shall, where the context so admits, include his or their respective assigns and successors in title and the persons deriving title under him or them.

As WITNESS the hands of the parties to these presents.

Witness to the signing of the above named [*vendor*] and [*purchaser*] [*Signature of Witness.*] } [*Sig. of Vendor.*] [*Sig. of Purchaser*] (*m*)

II. AGREEMENT *by* TRUSTEES *for the* SALE *of a* LEASEHOLD MESSUAGE, *&c.* APPLICATION *of* INSURANCE MONEYS *in event of* FIRE *before* COMPLETION.

Parties.

THIS AGREEMENT (*n*), made the —— day of ——, 19—, BETWEEN [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the vendors"), of the one part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part; WHEREBY IT IS AGREED and declared as follows:—

Agreement for sale and purchase—Parcels.

1. The vendors shall sell, and the purchaser shall purchase at the price of £——, all that leasehold messuage, &c. [*describe*

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deposit in the absence of express stipulation, see *Howe* v. *Smith*, 27 Ch. D. 89; *Hall* v. *Burnell*, [1911] 2 Ch. 551; *Harrison* v. *Holland*, [1921] 3 K. B. 297; and as to giving credit for the deposit in calculating the deficiency, see *Shuttleworth* v. *Clews*, [1910] 1 Ch. 176; *Griffiths* v. *Vezey*, [1906] 1 Ch. 796; *Dewar* v. *Mintoft*, [1912] 2 K. B. 373. As to the forfeiture of the deposit where a vital defect in the title is discovered, see *Re Scott and Alvarez*, [1895] 2 Ch. 603; and cf. *Beyfus* v. *Lodge*, [1925] 1 Ch. 356. For the measure of damages, see *Keck* v. *Faber*, 60 Sol. Jo. 253, 287; and *James* v. *Moolla Dawood, Sons & Co.*, [1916] A. C. 175.

(*m*) As to registration of the agreement as an estate contract, see *ante*, p. 227, note (*o*).

(*n*) Stamp, 6*d*.

parcels], situate in the parish of ——, in the county of ——, and now held by the vendors for the residue of a term of —— years from the —— day of ——, granted by an indenture of lease [underlease], dated the —— day of ——, and expressed to be made between [*lessor*] of the one part, and [*lessee*] of the other part, at the yearly rent of £——, and subject to the lessee's covenants and conditions therein mentioned. [*If necessary, insert provisions as to valuation of fixtures, p.* 275, *and insurance,* ante, *p.* 279.]

Delivery of abstract.

2. The vendors shall within —— days from the date hereof deliver to the solicitor of the purchaser an abstract of their title to the premises commencing with the said lease [underlease]. The production of the receipt for the last payment due for rent under the lease [underlease] shall be deemed conclusive evidence that all the covenants and conditions of the lease [underlease] have been duly performed and observed, or that all breaches (if any) of such covenants and conditions have been waived up to the day of completion of the purchase (*o*).

Production of lease, &c.

3. The lease [underlease] under which the property is held or a copy thereof, and a counterpart or copy of the lease to [agreement with] the tenants, having been already produced to the purchaser's solicitors, the purchaser shall be deemed to purchase with full notice of the contents thereof; and the purchaser shall also be deemed to have full notice of the state of the property as to repairs, insurance party works, and all other matters.

Objections and requisitions (*p*).

4. The purchaser shall within —— days after delivery of the abstract in writing, make and send to the solicitor of the vendors his objections and requisitions (if any) to the title, and shall also within —— days after the delivery of the vendors' replies to the purchaser's objections and requisitions (if any) in writing, make and send to the solicitor of the vendors his further objections and requisitions (if any) arising out of the vendors' replies: And every objection and requisition, or further objection or requisition, not so made and sent shall be deemed to have been waived,

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(*o*) See as to this the L. P. A. 1925, s. 45 (2) and (3); and see also *ante,* p. 230, note (*a*). By sect. 44 of the L. P. A. 1925, the effect of the judgment in *Patman* v. *Harland,* 17 C. D. 353, has been overruled, but only as regards contracts made after 1925.

(*p*) See *ante,* p. 222, Form 18 and notes (*z*) and (*a*).

II. SALE OF LEASEHOLDS.

and for this purpose time shall be of the essence of the contract. [The purchaser shall not make any objection or requisition on the ground of the non-registration of any deed or other document.]

Vendors entitled to rescind if requisitions insisted on (*q*).

5. In case the purchaser shall make any objection or requisition not being necessary for the enforcement of any right under either of sects. 42 or 125 of the Law of Property Act, 1925, which the vendors shall be unable or [on the ground of delay, difficulty, or expense, or on any other reasonable ground] unwilling to remove or comply with, the vendors shall be at liberty (notwithstanding any attempt to answer or comply with such objection or requisition, or any previous or pending negotiation or litigation) at any time, on giving the purchaser not less than ten days' notice in writing, to annul the sale, in which case, unless the objection or requisition shall have been in the meantime withdrawn, the sale shall at the expiration of the notice be annulled [and in that event the purchaser shall be entitled to a return of the deposit, but without interest, costs, or compensation].

Vendors to obtain lessor's license to assign.

6. The said lease contains a provision that the lessees shall not assign without license from the lessor. The vendors shall immediately after the execution of this contract apply for and endeavour to obtain such license, and if they shall be unable to obtain the same before the —— day of —— they shall be at liberty to rescind the sale in manner provided by the last preceding clause hereof.

6A. [*Clause as to identity, see* ante, *p.* 311, *clause* 10.]

Errors not to annul sale (*r*).

7. The admeasurements and description of the property are believed and shall be assumed to be correct, but if any misstatement, error, or omission shall be found in this agreement the same shall not annul the sale, nor shall any compensation be allowed either to the vendors or purchaser in respect thereof.

7A.—*Stamp and registration, see* ante, *p.* 272, *Form* 46.]

Expenses of making copies of deeds, &c., whether in vendors' possession or not, to be borne by purchaser.

8. [*Provision for expenses of making copies of deeds, &c., see* ante, *p.* 311, *clause* 9.]

Completion of purchase.

9. The purchaser shall on the —— day of —— next, pay the balance of the purchase-money at the office of the solicitors of

(*q*) See *ante*, p. 223, notes (*b*) and (*d*).
(*r*) See note (*e*), p. 312, *ante*.

the vendors at their office at ——, and the purchase shall then and there be completed, and thereupon the vendors and all other necessary parties (if any) will make and execute a proper assignment of the premises to the purchaser. Such assignment shall be prepared by and at the expense of the purchaser, and shall be left not less than —— days before the said —— day of —— for the approval of the vendors' solicitors at the office aforesaid (*s*).

Vendors to give statutory covenant against incumbrances.

10. The vendors who are selling, as trustees, shall be required to give only the statutory covenant against incumbrances implied by reason of their being expressed to convey as trustees. Any person whose consent is necessary to the assignment and joining as a party thereto for that purpose only shall not be required to enter into any covenant except that he has done nothing to prevent his so consenting.

As to custody of deeds, &c.

11. All deeds and documents which relate exclusively to the property hereby agreed to be sold shall be handed over to the purchaser on completion; but such deeds and documents as relate not only to that property, but also to other property, shall be retained by the vendors, who shall enter into the usual statutory acknowledgment for the production of the deeds and documents retained, but shall not be required to enter into any undertaking for the safe custody thereof [*or*, and shall also give a qualified undertaking for the safe custody thereof, whereby their liability shall cease on parting with the actual possession of the said deeds and documents].

Indemnity against rent and covenants.

12. The purchaser shall covenant to pay the rent and perform and observe the covenants of the lease [underlease] under which the property is held, and to indemnify the vendors [and the estate of their testator] from all liability in respect of such rent and covenants. And shall, if required, execute and deliver to the vendors a duplicate assignment to be prepared and stamped by and at the expense of the purchaser.

Application of insurance moneys in event of fire before completion (*t*).

13. If the said messuage and premises, or any part thereof, shall be destroyed or damaged by fire before the completion of the purchase, all moneys which shall be received by the vendors

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(*s*) Where the property is registered under the L. R. A. 1925, or is in a district where registration is compulsory, see *ante*, p. 224, note (*e*).

(*t*) A contract for sale of a house contained no reference to an existing insurance: after the date of the contract, but before completion, the

II. SALE OF LEASEHOLDS.

under the existing insurance of the premises shall be applied in or towards reinstating the same, or shall be paid to the purchaser, as he shall require (*u*).

13A. [*Provision as to insurance, see* ante, *p.* 279, *Form* 2.]

Receipt of rents and discharge of outgoings (*x*).

14. The rents [*or,* possession] of the premises shall be received [*or,* retained], and all rates, taxes, and outgoings, payable for or in respect thereof, shall be paid by the vendors up to the said —— day of ——, and as from that date the rents [possession] shall be taken by the purchaser, who shall thenceforth pay all the rents, taxes, and outgoings; And such rates, taxes, and outgoings shall, if necessary, for the purpose of this stipulation be apportioned, but the purchaser shall not be let into actual possession of the premises until completion of the purchase.

If purchase not completed on day appointed, purchaser to pay interest.

16. If from any cause whatever the purchase shall not be completed before the said —— day of ——, the purchaser shall as from that day pay interest for the said purchase-money to the vendors, after the rate of £—— per cent. per annum, until completion of the purchase.

Interpretation clause.

17. [*Insert clause* 16, ante, *p.* 314.]

As WITNESS the hands of the parties to these presents (*y*).

Signed by the above named [*vendors*] and [*purchaser*] in the presence of [*Signature of Witness.*] } [*Sig. of Vendors.*] [*Sig. of Purchaser.*]

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house was damaged by fire; it was held that the purchaser was not entitled as against the vendor to the benefit of the insurance: *Rayner* v. *Preston* (C. A.), 18 Ch. D. 1.

(*u*) See T. A. 1925, s. 20 (5).

(*x*) See *ante,* p. 217, note (*k*).

(*y*) As to registration of the agreement as an estate contract, see *ante,* p. 227, note (*o*).

III. CONTRACT *by a* TENANT *for* LIFE *or other* LIMITED OWNER *under the Settled Land Act, 1925, for the* SALE *of the principal* MANSION HOUSE, *and* DEMESNE LANDS *on a* SETTLED ESTATE *and* MANORS, *an* ADVOWSON, *and* LANDS *of* FREEHOLD *and* LEASEHOLD TENURE; *the* TIMBER *to be* SOLD *at a* VALUATION.

THIS AGREEMENT (*z*), made the —— day of ——, 19—, BETWEEN [*tenant for life*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*] of, &c. (hereinafter called "the purchaser"), of the other part. Parties.

1. The vendor, who is the estate owner under a vesting deed dated —— [subject to the consent of the trustees (*a*) of the settlement referred to in the said vesting deed, or the approval of the Court being obtained as hereinafter mentioned], agrees to sell, and the purchaser agrees to purchase, for the price of £—— (to be paid in manner hereinafter mentioned), [ALL THAT the mansion house known as —— Hall, situate in the parish of ——, in the county of ——, with the stables, outbuildings, gardens, pleasure grounds, park, and demesne lands thereto belonging, and usually held therewith; AND ALSO] all and singular the messuages, farms, lands, and hereditaments, containing by admeasurement altogether —— acres or thereabouts, and situate in the parishes of W., X., Y., and Z. respectively, and in the county of —— aforesaid, and all which hereinbefore mentioned premises are particularly described in the schedule hereto and delineated in the Sale and purchase. Parcels.

(*z*) Stamp, 6*d*.

(*a*) See S. L. A. 1925, ss. 30 *et seq.*, as to who are trustees for the purpose of the S. L. A.; and generally as to sales under the S. L. Acts, see Conveyances, Preliminary Note, *post*, pp. 343 *et seq.* The consent of the trustees or an order of the Court is not necessary for the sale of the principal mansion house if the settlement was made after 1925, and it did not expressly provide that the mansion house must not be sold without the consent of the trustees or order of the Court; conversely by the same sect. 65 (1) (a) such consent or order must be obtained if the settlement was made before 1926, unless the settlement expressly provides to the contrary.

As to what is the principal mansion house, see *Gilbey* v. *Rush*, [1906] 1 Ch. 11; *Re Wythes' S. E.*, [1908] 1 Ch. 593; and S. L. A. 1925, s. 65 (2).

III. SALE OF MANSION HOUSE, MANORS, &C. BY TENANT FOR LIFE.

plan hereto annexed; And also all those the two several manors or lordships, or reputed manors or lordships of X. and Y., in the county of —— aforesaid, with their respective rights, members, and appurtenances; And also all that the advowson and right of patronage and presentation of and to the rectory of —— aforesaid.

Particulars as to tenure, &c.

2. The bulk of the property is of freehold tenure, but subject as to part thereof to a fee farm rent of £—— per annum payable to the lord of the manor of Z.; —— acres or thereabouts were formerly of copyhold tenure, and are held of the manor of Z. aforesaid, at quit rents amounting altogether to £—— per annum, and are also liable to fines and heriots; and the remainder of the property, comprising —— acres or thereabouts, is of leasehold tenure, and held for the unexpired residue of a term of —— years from the —— day of ——, 19—, granted by an indenture of lease dated the —— day of ——, 19—, and expressed to be made between [*parties*] at the yearly rent of £——, and subject to the lessee's covenants and conditions therein contained. Subject and except as herein is mentioned the property will be sold free from incumbrances.

Fixtures, timber, crops, &c. to be taken at a valuation.

3. The tenant's fixtures in and about the mansion house, and all iron hurdles and iron fencing, and all the timber and timber-like trees, tellers, pollards, and saplings, down to the value of one shilling per stick, and the underwoods and plantations down to the stem (except the shrubs, plants, and fruit, and other trees in the flower garden and kitchen gardens adjoining the mansion house), and all agricultural machinery and implements, and the growing crops, dung, and compost, and all acts of husbandry and all rights usually appraised by the custom of the country as between an incoming and outgoing tenant shall be paid for by the purchaser at the time fixed for the completion of the sale at a valuation to be made by two referees, one to be nominated by the vendor and the other by the purchaser, or by an umpire to be appointed by such referees before proceeding to a valuation; but if either the vendor or purchaser shall refuse or neglect to nominate a valuer, and to notify such nomination in writing to the other of them, before the —— day of —— next, or if the valuer nominated by either party shall refuse or neglect to act, then the decision and valuation shall be made by the referee (if duly notified as aforesaid) of the other party alone.

4. The purchaser shall allow the vendor to have the use, until the —— day of —— next, of the barns, dressing rooms, stack-yards and farm buildings, on the home farm.

Vendor to have use of barns.

5. Upon or immediately after the execution of this contract the purchaser shall pay by way of deposit into the bank of Messrs. ——, to the credit of the account of [*trustee*], of, &c., and [*trustee*], of, &c., the trustees of the settlement referred to in the said vesting deed, the sum of £——, and a receipt for the same, signed by the said trustees, shall upon such payment be handed over to the purchaser by the said bankers; And the purchaser shall pay the balance of the purchase-money at the time and in manner hereinafter mentioned.

Payment of deposit (*b*).

6. Within —— days from the date of these presents the vendor, if required, shall deliver to the purchaser or his solicitor an abstract of the title of the vendor to the property sold, subject to the following stipulations:—As to the greater part of the property being of freehold tenure, and comprising the mansion house and its appurtenances, and the demesne lands, and the farms, cottages, lands, advowson, and hereditaments particularly described in the first part of the said schedule hereto, the title shall commence with a conveyance on sale, dated the —— day of ——: And as to the other part of the property, also being of freehold tenure, com-

Delivery of abstract.

Commencement of title (*c*).

(*b*) Unless the purchase-money is, by direction of the tenant for life, paid into Court, it must be paid to the trustees of the settlement to be invested or applied by them as capital money arising under the Act; the payment must not be made to "fewer than two persons as trustees of the settlement, unless the trustee is a trust corporation" (S. L. A. 1925, s. 94); and the receipt of the trustees, or sole trustee, if empowered to act, or of the personal representatives or representative of the last surviving or continuing trustee, is the only proper discharge to the purchaser for the payment of the purchase-money or any part thereof (sect. 95), except in the case of payment into Court, which effectually exonerates the person paying in the money (sect. 113 (4)).

Payment of purchase-money under Settled Land Act, 1925.

(*c*) For other stipulations as to title, evidence of title, &c., see *tit.* "Conditions of Sale." The advowson must be specifically mentioned in some part of the schedule, otherwise the title would have to be carried back for one hundred years: see Dart, 7th ed. 329; and the period has been preserved by the L. P. A. 1925, s. 44 (1). The title after 1898 must show the dates of the "institutions" and "admissions." As to the sale of advowsons and next presentations, see the Benefices Act, 1898, of which the special restrictions are not affected by the L. P. A. 1925: see sect. 201 (2).

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prising the several farms, cottages, lands, and hereditaments particularly described in the second part of the same schedule, the title shall commence with a general demise of real estate contained in the will of [*testator*], of, &c., deceased, who died, &c., and the purchaser shall assume without proof that the said [*testator*] was seised or otherwise entitled in fee simple, free from incumbrances, of or to the last mentioned premises: And as to other part of the property, being the formerly copyhold portion thereof, and containing —— acres or thereabouts, and comprising the several closes of land and hereditaments particularly described in the third part of the same schedule, the title shall commence with an admittance dated, &c.: And as to the leasehold portion of the property, comprising the messuages and lands thereto adjoining, particularly described in the fourth part of the said schedule, the title shall commence with the hereinbefore mentioned indenture of lease: And as to the residue of the property, comprising several detached cottages, closes of land, and hereditaments, containing altogether —— acres or thereabouts, and particularly described in the fifth part of the said schedule (and which last mentioned premises were purchased by the vendor, or by the trustees of the said settlement, at his request from time to time since the year 19—), the purchaser shall be satisfied with such titles as the vendor himself or the said trustees accepted on the occasion of the respective purchases. The said lease and counterparts of the leases or written agreements with the tenants have been already produced to the purchaser's solicitors, and the purchaser shall be deemed to purchase with full notice of the contents thereof respectively, and of the terms of the tenancies, and of the rights affecting the property, notwithstanding any incomplete or inaccurate statement thereof herein. The production of the receipt for the last payment due for rent under the hereinbefore mentioned indenture of lease, shall be deemed conclusive evidence that all the covenants and conditions thereof have been duly performed and observed, or that all breaches (if any) of such covenants and conditions have been waived up to the day of completion of the purchase.

7. [*Reservation of mines and minerals, &c., see Special Conditions, IX.*, ante, *p.* 280] (*d*).

(*d*) As to reservation of mines, &c., see S. L. A. 1925, s. 50.

8. The sale is made subject to the said fee farm rent of £——, and to the quit and other rents, heriots, fines and services, and covenants hereinbefore mentioned or referred to respectively, and all subsisting manorial rights of the lord of the said manor of Z. and incidental thereto, and to all subsisting rights of way and water, and other easements affecting the premises. Sale made subject to fee farm rent and manorial rights, &c.

9. No requisition or inquiry shall be made as to the creation or origin of the said fee farm rent, or of any of the said quit and other rents, fines, and heriots. As to creation of rents, &c.

10. The vendor shall not be required to distinguish the precise limits or boundaries of the said manors hereby agreed to be sold respectively, or of the several lands held under different titles as aforesaid, or to furnish any evidence or information not in his possession as to the existence or nature of any manorial rights or franchises, or otherwise, as to the said manor, or as to the identity of the property sold with that described in the muniments of title. As to evidence of identity.

11. If at any time before completion the vendor shall be unable to assure the said property to the purchaser for the estates and interests hereby agreed because there are no trustees, or not sufficient trustees of the said settlement for the purposes of the Settled Land Act, 1925, the vendor will at his own expense, or that of the settled estate, either appoint or procure the appointment of proper persons to be such trustees.

12. [*Delivery of objections and requisitions*, ante, *p.* 311, *Form* 7a.] As to requisitions.

13. [*If requisitions are insisted on, vendor may rescind*, ante, *p.* 311, *Form* 8.]

14. The purchaser shall on or before the —— day of ——, pay either to the trustees at the office of their said solicitors at ——, or at the option of the vendor, to be signified in writing to the purchaser within one week after the title is accepted into Court, the balance of the purchase-money, and the amount of the valuation aforesaid (*e*), and the purchase shall then and there be com- Completion of purchase.

(*e*) Where the deposit is paid to a deposit account in the joint names of the vendor and purchaser, add,

"And at the same time the deposit shall be withdrawn from the said bank and paid over to the said trustees or into Court, as the case may be, but all interest which shall have accrued thereon up to that date shall be paid to the purchaser."

III. SALE OF MANSION HOUSE, MANORS, &C. BY TENANT FOR LIFE.

pleted; the vendor and all other necessary parties shall thereupon execute a proper conveyance of the property to the purchaser. Such conveyance to be prepared by and at the expense of the purchaser, and to be left by him for the approval of the vendor's solicitors at their office aforesaid not less than —— days before the said —— day of ——.

As to covenants for title by vendor and concurrence of trustees.

15. The vendor shall not be required to enter into any covenant for title except the usual statutory covenant that he has not encumbered. The said trustees will concur in the conveyance, but only for the purpose of testifying their consent to the sale hereby contracted to be made and acknowledging the receipt of the purchase-money and of the amount of the said valuation.

16. [*Purchaser to have possession on day fixed for completion*, ante, *p.* 318, *Form* 14.]

17. [*If purchase not completed on day fixed, purchaser to pay interest for the purchase-money "and the amount of the valuation aforesaid,"* ante, *p.* 318, *Form* 16.]

18. [*Expenses*, ante, *p.* 311, *Form* 9.]

19. [*Errors and misdescription*, ante, *p.* 286. *Form* 1, 2 or 3, *substituting* "this agreement" *for* "the particulars or these conditions"] (*f*).

20. [*Muniments, retention of*, ante, *p.* 313, *Form* 14.]

Consent of trustees or order of Court (*g*).

21. The vendor shall on or before the —— day of ——, at his own cost, or that of the settled estate, apply for and endeavour to obtain the consent of the said trustees to or an order of the Court approving the sale, and if such order or consent shall not be obtained on or before the —— day of ——, or such later day as the vendor and the purchaser shall agree [or if the sale cannot for any reason arising from the state of the title be carried into effect under the statutory or other powers of the vendor or his trustees], then the sale shall be void, and the deposit shall be returned to the purchaser, but without any interest, costs, or compensation.

22. [*On default of purchaser to complete the deposit shall be*

(*f*) See *ante*, p. 221, note (*x*), and p. 312, note (*l*).

(*g*) This provision will be required where such consent or order is necessary, *e.g.*, on a sale of the principal mansion house: see *ante*, p. 319, note (*a*).

forfeited, and vendor may rescind the contract and resell the property, ante, *p.* 313, *Form* 15.]

23. [*Interpretation clause*, ante, *p.* 313, *Form* 16.]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

IV. PROVISIONAL AGREEMENT *by a* TENANT *for* LIFE *under the Settled Land Act*, 1925, *for the* SALE *of* HEIRLOOMS (*h*).

THIS AGREEMENT (*i*), made the —— day of ——, 19—, BETWEEN [*tenant for life*], of —— Hall, in the county of —— (herein called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS under or by virtue of a vesting deed (*j*) dated ——, the vendor is now entitled to certain personal chattels, including the chattels and articles specified in the schedule hereto, settled by a settlement dated ——, and expressed to be made between ——,

Parties.

Recitals: of settlement;

(*h*) By sect. 67 of the Settled Land Act, 1925, it is enacted that— Heirlooms

"(1) Where personal chattels are settled so as to devolve with settled land, or to devolve therewith as nearly as may be in accordance with the law or practice in force at the date of the settlement, or are settled together with land or upon trusts declared by reference to the trusts affecting land, a tenant for life of the land may sell the chattels or any of them.

"(2) The money arising by the sale shall be capital money arising under this Act," &c.

"(3) A sale or purchase of chattels under this section shall not be made without an order of the Court."

The tenant for life must show that the sale is in the interests of all parties: *Re Hope*, [1899] 2 Ch. 679. See, as to this section, and the cases in which sales of heirlooms have been ordered or refused, Wolstenholme, 10th ed. p. 436.

(*i*) Stamp, 6*d*.

(*j*) It is not clear that heirlooms being chattels not devolving with an estate tail but intended, *e.g.*, to follow limitations for life or lives with remainders over in fee simple will pass under a vesting deed, which is insufficient in itself to pass property in chattels at law. It is assumed that a vesting deed is required by the combined effect of sect. 130 (1) and (3) of the L. P. A. 1925, and S. L. A. 1925, s. 13.

IV. OF HEIR-LOOMS BY TENANT FOR LIFE.

&c., on trusts so as to devolve with lands thereby settled in tail, or together therewith, or on trusts declared by reference to the trusts affecting the same within the meaning of sect. 67 of the Settled Land Act, 1925; AND WHEREAS by an order dated the —— day

of appointment of trustees;

of —, 19—, of the Chancery Division of the High Court of Justice, in the matter of, &c., upon the application of the vendor, [*trustee*], of, &c., and [*trustee*], of, &c., were appointed trustees of the said settlement for the purposes of the Settled Land Act, 1925.

of notice to trustees.

AND WHEREAS on the —— day of ——, 19—, the vendor duly gave notice of his intention to sell the said chattels and premises specified in the schedule hereto to each of the said trustees and also to their solicitors, as required by sect. 101 of the Settled Land Act, 1925. NOW THESE PRESENTS WITNESS, and it is hereby agreed by and between the parties hereto as follows:—

Agreement for sale.

1. Subject to the sanction of the High Court of Justice being obtained as hereinafter mentioned, the vendor shall sell, and the purchaser shall purchase for the sum of £——, the jewels, plate, pictures, statues, and other works of art, books, furniture, and other chattels and articles specified in the schedule hereto.

Payment of deposit.

2. Immediately upon the execution of these presents, the purchaser shall pay by way of deposit into the bank of Messrs. ——, to the credit of [*stakeholder*], of, &c., and [*stakeholder*], of, &c., as stakeholders, but at the risk of the purchaser, the sum of £——.

Completion of the purchase.

3. The purchase shall be completed on the —— day of —— next, at the office at —— of Messrs. ——, the vendor's solicitors, on or before which day the sum so paid by way of deposit as aforesaid, together with the balance of the said purchase-money, shall be paid to the said [*trustees*], or at the option of the vendor, to be signified in writing to the purchaser within one month after the title is accepted, into Court.

Purchaser to pay interest till payment.

4. If the purchaser shall not, on or before the said —— day of ——, pay the balance of the purchase-money in accordance with the stipulation hereinbefore contained, he shall pay interest for the same at the rate of 5*l.* per cent. from that date until actual payment thereof: PROVIDED ALWAYS that the purchaser shall not be bound to pay the balance of the purchase-money, or any interest for the same, unless an order of the Court as hereinafter is mentioned shall have been obtained on or before the —— day of ——, 19—.

Delivery of

5. Upon production of the receipts for the payment of the

deposit and balance of the purchase-money respectively, the said chattels and premises, specified in the schedule hereto, shall be delivered over to the purchaser, or to any person or persons authorised by him in writing to receive the same at —— Hall aforesaid, and shall be removed therefrom by him or them at his or their own risk.

Heirlooms to purchaser.

6. The vendor shall not be required to furnish any evidence of his title to the premises, other than and except the said indenture of settlement, and the schedule, or inventory of the chattels held as heirlooms under the trusts of the same settlement. The said indenture of settlement and inventory may be inspected by the purchaser, or his solicitor, at the office of Messrs. ——, the vendor's solicitors, but the purchaser shall not be entitled to make or be furnished with any copy or abstract of the said indenture of settlement and inventory respectively.

Title.

7. The vendor will, at the expense of himself, or of the settled estate, forthwith apply for and endeavour to obtain an order of the Court sanctioning the sale hereby agreed to be made of the said chattels and premises; And unless such order shall have been obtained before the —— day of ——, 19—, this agreement shall be void, and thereupon the said deposit, with all interest actually accrued thereon, but without any further or other interest, costs, or compensation whatsoever, shall be paid to the purchaser.

Vendor to apply for order of Court.

8. If the purchaser shall neglect or fail to comply with the above stipulations, the vendor shall be at liberty to rescind the present sale, and resell the property, either by public auction or private contract, at such time and place, and subject to such conditions as the vendor shall think fit, and the deficiency of price, if any, which shall happen on such resale, and the expenses of and incident to the present sale and such resale, shall immediately after such resale be made good and be paid to the vendor by the present purchaser, and in case of non-payment the whole or such part of such deficiency as shall not be paid shall be recoverable by the vendor as liquidated damages.

On default of purchaser to comply with stipulations, vendor may rescind and resell.

[9. The contract hereby expressed and intended to be made shall not become absolutely binding upon the vendor until the expiration of one calendar month from the —— day of ——,

Contract not to be absolutely binding till expiration of period of notice (*k*).

(*k*) This clause will only be necessary when notice was given to the trustees or their solicitors less than one month before the date of the

IV. OF HEIR-LOOMS BY TENANT FOR LIFE.

without any proceedings being taken to prevent the sale hereby contracted to be made.]

10. [*Provision as to insurance, cf. Form* 2, ante, *p.* 279, *VIII.*]

11. [*Interpretation clause, Form* 16, *p.* 314, ante.]

As witness, &c.

The Schedule above referred to.

V. AGREEMENT *for the* Sale *of a* Leasehold Shop, Fixtures, Stock-in-Trade, *and* Goodwill *of a* Business. Purchase-money *to be* Paid *by* Instalments. Unpaid Instalments *to be* Secured *by* Purchaser's Bond *and by* Mortgage *of the* Premises *and* Fixtures, *&c.*

Parties.

AN AGREEMENT (*l*), made the —— day of ——, 19—, Between [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part:

Recital of lease of premises.

Whereas the vendor has for some time past carried on the trade or business of a ——, in the city of ——, at a shop [*or*, manufactory] to which the vendor is entitled for the remainder of a term of —— years therein granted to him by a lease dated the —— day of ——, and expressed to be made between [*lessor*] of the one part and the vendor of the other part.

Witnesseth.

NOW THESE PRESENTS WITNESS, and it is hereby agreed and declared by and between the parties hereto as follows:—

Agreement for sale and purchase of shop and goodwill at fixed price;

1. The vendor shall sell and the purchaser shall purchase All that the shop [*or*, manufactory] aforesaid, with the appurtenances, for the residue now to come of the said term, and at the yearly rent of £—— reserved by the said lease, and subject to the lessees' covenants and conditions therein contained, Together with the goodwill (*m*) of the said trade or business, including the right

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contract (S. L. A. 1925, s. 101 (1)) and such notice has not been accepted in writing by them: *ibid.*, sub-sect. (4).

(*i*) Stamp, 6*d*.

(*m*) In this precedent the intention is that the vendor shall not in any way compete with the purchaser: see clause 11. Where the vendor is to

to use the vendor's name in connection therewith, and to represent the purchaser as carrying on the business as the successor of the vendor (*n*), for the sum of £——, payable as is hereinafter mentioned: AND ALSO all the implements, utensils, and fixtures in and upon the said shop [*or*, manufactory] and used and employed in the said trade or business of a ——; AND all the stock-in-trade and book and other debts belonging and owing to the vendor respectively on the —— day of —— next, and the benefit of all then existing contracts and engagements relating to the said trade or business for a sum to be determined by valuation in manner hereinafter mentioned (*o*).

of fixtures, stock-in-trade, &c. at a price to be settled by valuation.

2. The said valuation shall be made at the joint expense of the vendor and purchaser on or before the —— day of —— next by [*referee*], of, &c., on behalf of the vendor, and by [*referee*], of, &c., on behalf of the purchaser (*o*); AND in case they shall not agree in their valuation, then by such umpire as the said referees shall, before proceeding to their reference, for that purpose appoint; AND the decision of the said referees or of the said umpire, as the case may be, shall be final.

Valuation, how to be taken.

3. The purchaser shall pay a deposit of £——, upon the execution of this agreement. The remainder of the purchase-money shall be paid in manner hereinafter mentioned.

Payment of deposit.

4. [*Delivery of abstract of title to the* "leasehold" *premises*, ante, *p.* 315, *substituting* "vendor" *for* "vendors."]

5. [*Production of lease*, ante, *p.* 315.]

6. [*Objections and requisitions on title*, ante, *p.* 315, *adding clause* 5, *p.* 316, *substituting as above.*]

7. [*Errors in description*, ante, *p.* 316, *substituting as above.*]

8. [*Expenses*, ante, *p.* 311, *clause* 9, *substituting as above.*]

9. The purchaser shall pay the remainder of the purchase-money, including the sum which shall be determined by valuation

Payment of purchase and valuation-money by instalments.

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be at liberty to carry on a similar business in the neighbourhood, a special clause enabling him to do so should be inserted in the contract: see *Johnson* v. *Helleby*, 34 L. J. Ch. 179.

(*n*) See *Thorneloe* v. *Hill*, [1894] 1 Ch. 569.

(*o*) If preferred, say,

"by a valuation to be made by Messrs. ——, of, &c., or failing such valuation, at their fair value,"

and omit the next clause.

V. OF SHOP AND GOOD-WILL, &c.

as aforesaid, by the instalments and in manner following (that is to say), the first instalment of £—— on the —— day of —— next, on which day the purchase shall be completed; a second instalment of £—— on the —— day of ——, 19—; a third instalment of £—— on the —— day of ——, 19—, and the last instalment, being the balance remaining due after the payment of the said deposit and these instalments respectively, on the —— day of ——, 19—. And the instalments for the time being remaining unpaid shall bear interest at the rate of 5 per cent. per annum, as from the said —— day of —— next, and the interest accrued due up to the day of payment of each instalment shall be paid therewith.

Assignment to be executed;

10. On receiving from the purchaser the said first instalment on the said —— day of —— next as aforesaid, the vendor will execute a proper assignment of the premises to the purchaser, such assignment to be prepared by and at the expense of the purchaser, and to be left not less than —— days before the completion of the purchase, for the approval of the solicitors of the vendor, at their office in —— Street, in the City of —— aforesaid.

to contain covenants by vendor not to carry on same business, &c.;

11. The said assignment shall contain covenants by the vendor to recommend the purchaser to all the late or present customers of the vendor; and not to trade or deal in the said trade or business of a —— directly or indirectly, alone or in partnership or jointly with, or as manager for or assistant to, any person or persons whomsoever in —— aforesaid, or within miles thereof, nor shall he authorise his name or style of —— & Co. to be used for the purpose of any such business by any person or persons within the limit aforesaid for the space of seven years from the said —— day of —— next.

to contain covenants by purchaser for payment of instalments, &c.

12. The said assignment shall contain covenants by the purchaser for the payment of the rent and observance and performance of the lessees' covenants and conditions under the said lease, and to indemnify the vendor in respect thereof, and also for payment of the said instalments, and of the interest thereon after the rate aforesaid, on the days hereinbefore appointed for payment thereof respectively; AND ALSO a proviso that if any instalment or interest, or any part thereof respectively, shall be in arrear and unpaid after thirty days from the days hereinbefore appointed for payment thereof respectively, then the whole of the purchase-

money (including the amount of such valuation as aforesaid), or the instalments thereof, for the time being remaining unpaid, shall immediately become payable with interest thereon after the rate aforesaid up to the day of payment.

Purchaser to give bond,

13. The purchaser, together with some other person to be approved of by the vendor, shall on the said —— day of —— next, execute to the vendor a bond in the penalty of £——, for the payment to him of the instalments of the purchase-money (including the amount of such valuation as aforesaid), which shall then remain unpaid, with interest after the rate and payable at the times aforesaid. AND the purchaser, if and whenever required by the vendor in writing so to do, shall execute a proper and valid mortgage to the vendor of the premises comprised in the said lease [and also of the implements, utensils, fixtures, stock-in-trade, and effects of the said business], as a further security for the payment of the instalments then remaining unpaid and interest thereon, after the rate and at the times hereinbefore mentioned respectively. Such mortgage shall contain all such powers and provisions as may be reasonably required by the vendor [and shall be duly registered as a bill of sale under the Bills of Sale Acts, 1878 and 1882, or any other statute for the time being in force for regulating such registration].

and execute mortgage, if required.

Continuance of business until completion.

14. The business shall be carried on by the vendor for his own benefit and at his own risk and cost up to the said —— day of —— next, and as from that date until actual completion for the benefit and at the risk and cost of the purchaser; but the vendor shall retain possession of the premises and the right to the control and management of the business until completion.

Provision as to profits and outgoings.

15. All profits of the said business and premises up to the said —— day of —— next (except moneys then previously received on account of stock to be taken by the purchaser, which shall be allowed for in the said valuation), and all outgoings in respect thereof up to the same date (including ascertained liabilities previously incurred, but not discharged) shall belong to or be discharged by the vendor; AND as from that date the profits shall belong to and all outgoings and losses (including liabilities in respect of uncompleted contracts or engagements) shall be discharged by the purchaser; AND such profits and outgoings shall, if necessary, be apportioned for the purposes hereof.

16. [*Insert interpretation clause*, ante, *p.* 314, *Form* 16.]

AS WITNESS, &c.

VI. TERMS FOR PURCHASE OF LAND BY RAILWAY COMPANY.

VI. TERMS *for the* PURCHASE *of* LAND *by a* RAILWAY COMPANY.

MEMORANDUM of terms for the purchase of land by the —— Railway Company.

County of ——. Parish of ——.

Number on plan of land agreed to be purchased: ——.

Admeasurement: —— acres, —— roods, —— perches.

Name and address of vendor: ——, of, &c.

Purchase to comprise the fee simple in the land and the mines and minerals in and under the same.

Purchase-money to include compensation for mines and minerals, severance, accommodation works, and all damage by execution of works, and all rights of pre-emption over surplus lands, agreed at £——.

Company to have possession on the —— of ——, 19—.

Rents and profits to be taken, and outgoings paid by the vendor up to the —— of ——, 19—, and thereafter by the company.

Costs to be paid by the company under the Act.

Surveyor's fees agreed at £——.

Formal agreement to be prepared by the company's solicitors.

[*Signature of Vendor.*]
[*Signature of* A. B.],
Agent for the Company.

Dated the —— day of ——, 19—.

VII. AGREEMENT *for the* SALE *of* LAND, *with* MINES, *&c., to a* RAILWAY COMPANY (*p*). PURCHASE-MONEY *to include* COMPENSATION *for* SEVERANCE, *&c., and* SATISFACTION *for* ACCOMMODATION WORKS. COMPANY *to have* IMMEDIATE POSSESSION.

Parties.

AN AGREEMENT (*q*), made the —— day of ——, 19—, BETWEEN A. B., of, &c. (hereinafter called "the vendor"), of the one part, and the —— Railway Company (hereinafter called

(*p*) See the provisions of the Lands Clauses Consolidation Act, 1845 (8 Vict. c. 18), amended by the Lands C. C. Act Amendment Act, 1860, the Lands C. C. Act, 1869, and the Lands Clauses (Umpire) Act, 1883; and see also sect. 45 of the Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20).

(*q*) Stamp, 6*d*.

"the company"), of the other part; WHEREBY IT IS AGREED as follows, that is to say:— VII. SALE OF LAND TO RAILWAY COMPANY.

1. Under or by virtue of the powers, and subject to the provisions of the —— Railway Act, 19—, and of the public Acts incorporated therewith, the vendor, on behalf of himself and all persons whomsoever having any estate or interest in the hereditaments hereinafter mentioned, shall sell, and the company shall purchase for the purposes of the railway and works by the said —— Railway Act, 19—, authorised to be made and constructed, and other the works connected therewith, at the price of £——, ALL THOSE closes of land and hereditaments situate in the parish of ——, in the county of ——, and which premises are particularly described with their respective admeasurements in the schedule hereto, and are also delineated and numbered —— on the plans (*r*), and described in the book of reference thereto relating to the said railway, deposited by the company in the office of the clerk of the peace for the county of ——, at ——; [TOGETHER with all mines and minerals (*s*) in and under the same premises] in fee simple, free from incumbrances [except such as are mentioned in the schedule hereto] (*t*). Agreement for sale and purchase.

(*r*) See Railway C. C. Act, 1845, s. 8.

(*s*) See Railway C. C. Act, 1845, ss. 77—85. If the company are unwilling to purchase, the owner may work the mines (sect. 79). It is generally advisable that the company should purchase the mines along with the surface, whereby the necessity of paying compensation, under sect. 78, for leaving the mines unworked, and under sect. 81, for severance, &c., is avoided. As to the vendor's right to work the minerals if not purchased by the company, see *Pountney* v. *Clayton*, 11 Q. B. D. 820; *Midland Rly. Co.* v. *Robinson*, 15 App. Cas. 19. The term "mines" in a conveyance to a canal company was held to include quarries: *Midland Rail. Co.* v. *Checkley*, L. R. 4 Eq. 19; see also *Hext* v. *Gill*, L. R. 7 Ch. 699. As to what are minerals, see the following cases: as to "clay," see *G. W. Rly. Co.* v. *Blades*, [1901] 2 Ch. 624; *Re Todd*, [1903] 1 K. B. 603; "china clay," *G. W. Rly. Co.* v. *Carpalla, &c. Co.*, [1910] A. C. 83; "sandstone," *North British Rly. Co.* v. *Budhill Coal & Sandstone Co.*, [1910] A. C. 116; "fire-clay," *Caledonian Rly.* v. *Glenboig, &c. Co.*, [1911] A. C. 290; "freestone," *Symington* v. *Caledonian Rly. Co.*, [1912] A. C. 87; "brine," *A.-G.* v. *Salt Union, Ltd.*, [1917] 2 K. B. 488. Purchase by railway company under R. C. C. Act.

(*t*) See *ante*, p. 308, and note (*s*), *ibid.*

The vendor is bound to show a title in accordance with his contract. Easements, restrictive covenants, and all rights amounting to incumbrances

VII. SALE OF LAND TO RAILWAY COMPANY.

Purchase-money to include compensation for mines, severance, &c.

2. The said price of £—— shall include, and be in full satisfaction of and compensation for [all mines and minerals, and for] all damage caused by severing the lands and premises purchased from other property of the vendor, or by otherwise injuriously affecting such other property in the exercise of the powers of the said Acts, and in full satisfaction of all communications, bridges, culverts, drains, ways, passages, accommodation works (*u*) and things whatsoever which might otherwise be required to be made or done under any of the said Acts for the better enjoyment, protection, or accommodation of the vendor's adjoining or other property.

Also for tenant's rights, &c.

3. The said price of £—— shall also include and be in full satisfaction of and compensation for all claims and demands whatsoever of the tenants or occupiers of the premises hereby agreed to be sold; PROVIDED ALWAYS that the company shall give due notice to such tenants and occupiers to treat as provided by the said Acts, and shall deliver to the vendor all claims and demands sent in pursuant to the said notices, and the vendor shall be at liberty to settle with the said tenants and occupiers, upon such terms as may be mutually agreed between him and them with regard to their respective interests in the premises, and he shall indemnify the company from all claims and demands in respect of the premises.

Alteration of levels.

4. The vendor hereby consents to such alterations of levels as may be found necessary or convenient in the construction of the said railway and works.

Delivery of abstract.

5. The vendor shall, whenever thereunto required by the solicitors of the company in writing, deliver to them an abstract of title to the premises hereby agreed to be sold; but such abstract shall not commence at an earlier date than shall be required by them, and no costs or expenses shall be incurred by the vendor in preparing the abstract or otherwise as to title, except upon the written request in that behalf of the said solicitors or of the secretary of the company. [*If necessary, add provisions as to title, evidence of title, identity, or other matter, as in Precedent I.*, ante, *pp.* 307 et seq.]

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to which the property is subject should be specified. The rights are matters for compensation: *Long Eaton Recreation Ground* v. *M. Rly. Co.*, [1902] 2 K. B. 574.

(*u*) As to accommodation works, see Railway C. C. Act, 1845, ss. 68—76.

Errors, &c.

6. If any error or omission shall be found as regards the admeasurements or descriptions of the premises, compensation on account thereof shall be paid or allowed by the vendor or the company, as the case may require [*or*, no compensation on account thereof shall be paid or allowed by or to the vendor or the company].

Completion of purchase.

7. The purchase-money, together with all costs and expenses allowed by the said Acts or by this agreement, shall be paid to the vendor at the office of Messrs. ——, his solicitors, at ——, on the —— day of ——, provided a good title to the premises shall then have been shown. The vendor and all other necessary parties, if any, shall thereupon make and execute a proper conveyance of the premises to the company (*x*), such conveyance to contain the usual statutory acknowledgment by the vendor of the right of the company to production of all documents relating to the premises agreed to be sold and retained by the vendor, and [but not an] undertaking for the safe custody thereof.

Delivery of possession to the company.

8. The vendor shall up to the said —— day of ——, retain possession of the premises or receive the rents and profits thereof, and shall pay all taxes, rates, and outgoings in respect thereof; and as from that day the possession shall be taken and the rents and profits shall be received and all taxes, rates, and outgoings shall be paid by the company.

Power for company to take immediate possession.

9. PROVIDED ALWAYS that the company shall be at liberty to take immediate possession of the premises upon depositing the said price or sum of £——, in the —— Bank in the joint names of the vendor and of C. D. on behalf of the company, where the same sum shall remain at the risk of the company until completion of the purchase, when the same shall be paid to the vendor or other persons entitled thereto, or otherwise into Court for his or their benefit as provided by the said Acts.

In such case company to pay interest on purchase-money.

10. If the company shall take immediate possession under the last preceding clause, the company shall pay interest on the purchase-money at the rate of £—— per cent. per annum on the amount of the purchase-money from the time of taking such possession until completion of the purchase, but shall be entitled

(*x*) As to the company being bound to take a conveyance, see *Re Cary-Elwes*, [1906] 2 Ch. 143.

VII. SALE OF LAND TO RAILWAY COMPANY.

to receive all interest allowed by the said bank upon the deposit of the purchase-money.

Apportionment of land tax, &c.

[11. The land tax and tithe rentcharge shall be apportioned (if necessary) at the expense of the company.]

Right of pre-emption, release of (*y*).

[12. The vendor shall release to the company any right of pre-emption to which he may be entitled under the Lands Clauses Consolidation Act, 1845.]

Right of pre-emption, reservation of (*y*).

[12A. The purchaser's right of pre-emption under the Lands Clauses Consolidation Act shall extend to any part of the premises situate in a town, or built upon or used for building purposes, and which shall not be required for the purposes of the company, in like manner as if such premises were not so situate, built upon, or used. And no part thereof shall in the meantime be let on lease, or from year to year, or otherwise, except to the vendor, his heirs or assigns.]

Costs to be paid by the company (*z*).

13. The fees of the vendor's surveyor amounting to £——, and all costs of the solicitors of the vendor up to and inclusive of the

(*y*) See sect. 128 of the L. C. A. 1845.

Costs.

(*z*) The costs of conveyances, where lands are taken by agreement, are regulated by sect. 82 of the L. C. A. 1845, which provides that—"The costs of all such conveyances shall be borne by the promoters of the undertaking; and such costs shall include all charges and expenses incurred on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title." The more extensive obligations as to costs imposed by sect. 80, relate only to cases where land is taken compulsorily. The clause in the text provides for the payment by the company of all costs to which the company would be liable under sects. 81 and 82. As to the costs under sect. 82, see *Re London United Tramways Act*, 1900, [1906] 1 Ch. 534; *Re Thames Tunnel Act*, [1908] 1 Ch. 493; *Re Elementary Education Acts*, [1909] 1 Ch. 55. As to costs payable under sect. 80, see *Bentinck* v. *L. & N. W. Rly. Co.*, 40 Sol. J. 130; *Re Gaselee*, [1901] 1 Ch. 923; *Re Leeds Grammar School, ibid.* 228; *Re Magdalen Coll., Oxford*, [1901] 2 Ch. 786; *Re Jacobs*, [1908] 2 Ch. 691; *Wood Green, &c. Charity*, [1909] 1 Ch. 263; *Re Clark*, [1906] 1 Ch. 615. Under sects. 42 and 125 of the L. P. A. 1925, certain expenses are payable by the vendor exclusively, but sects. 80 and 82 of the L. C. A. 1845, have not been repealed, and, it is assumed, that these sections govern the expenses of the matters which are regulated by the Acts in which they are contained.

preparation and execution of this agreement, and of carrying the same into effect, and all other costs, charges, and expenses of the vendor as provided by the Lands Clauses Consolidation Act, 1845, or which might have been ordered by the Chancery Division to be paid by the company if the purchase-money had been deposited in the bank, shall be paid by the company.

As witness, &c.

The [First] Schedule above referred to.

No. on Parliamentary Plan.	Description of Property.	Tenure.	Occupier.	Quantity. A. R. P.	Particulars of Incumbrances.

[The Second Schedule above referred to.

List of easements and other incumbrances affecting the land sold.]

VIII. AGREEMENT *for the* Sale *of a* Leasehold Farm. Purchaser *to be let into* Possession *before* Acceptance *of* Title.

AN AGREEMENT (*a*), made the —— day of ——, 19—, Between [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part; WHEREBY IT IS AGREED as follows:— Parties.

1. The vendor shall sell, and the purchaser shall purchase, all that messuage or farmhouse, &c. [*describe parcels, see* post, *p.* 483], and which premises are more particularly described in the schedule hereto, and are delineated in the plan hereto, and therein coloured pink, and are now held, &c. [*continue as in clause* 1 *of Precedent II.*, ante, *p.* 314], for the price of £——, whereof part, that is to say, £——, shall be paid by way of deposit upon the execution Agreement to sell and purchase.

(*a*) Stamp, 6*d*.

VIII. SALE OF LEASEHOLD FARM.

of these presents, and the remainder thereof upon the completion of the purchase.

2, 3, 4, and 5. [*Take in clauses* 2, 3, 4, *and* 5 *from Precedent II.*, ante, *pp.* 315 *and* 316, *substituting* "vendor" *for* "vendors," *and add any special conditions as to title which may be required.*]

Errors not to annul sale, &c.

6. If any error, misdescription, or omission shall be discovered the same (if capable of compensation) shall not annul the sale, but a compensation shall be allowed or given by the vendor or purchaser as the case may require, such compensation to be settled, in case of difference of opinion, by A. B., of, &c., as referee on behalf of the vendor, and C. D., of, &c., as referee on behalf of the purchaser, if they agree, and by E. F., of, &c., if the said referees should disagree, and the decision of the said referees or of the said umpire, as the case may be, shall be final.

Completion of purchase.

7. The purchaser shall, on or before the —— day of ——, pay the balance of the purchase-money at the office of Messrs. ——, the solicitors of the vendor, at ——, and the purchase shall then and there be completed; AND thereupon the vendor and all other necessary parties (if any) will execute a proper assignment of the premises to the purchaser, such assignment to be prepared by and at the expense of the purchaser, and to contain covenants by the purchaser for the payment of the rent reserved by and observance and performance of the lessees' covenants and conditions contained in the said lease, and for indemnifying the vendor from all liability in respect of such rent and covenants.

Purchaser to take possession before completion.

8. The purchaser shall be at liberty to take possession of such parts of the premises as are described in the schedule hereto as meadow, pasture, and woodlands on the —— day of —— next, and of such parts of the said premises as are described in the said schedule as arable lands on the —— day of —— next, and of the remainder of the premises on the —— day of —— next, as fully to all intents and purposes as if an assignment of the premises had actually been executed: PROVIDED ALWAYS that such taking of possession shall not be deemed to be an acceptance by the purchaser of the vendor's title, or any waiver or abandonment by the purchaser of his right to make requisitions and objections as hereinbefore provided in respect of such title (*b*).

(*b*) As to the effect of entry into possession before conveyance, see *ante*, p. 256, note (*p*).

9. The purchaser shall not be required to make to the vendor any payment by way of rent, interest, or otherwise, by reason of his taking possession as aforesaid of the premises before the completion of the purchase, and occupying them up to the said —— day of —— next, but if the purchase shall not be completed on that day from any cause whatever, other than a default by the vendor in deducing a title in accordance with this agreement on or before that day, the purchaser shall, as from that day, pay interest on the unpaid balance of the purchase-money at the rate of 5 per cent. per annum, until completion of the purchase.

If completion delayed purchaser to pay interest.

AS WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

IX. AGREEMENT *by a* VENDOR *to* REPURCHASE PREMISES *if* REQUIRED *by the* PURCHASER *within a limited* PERIOD, *in case the* TITLE DEEDS *are not* FOUND *in the* MEANTIME.

ARTICLES OF AGREEMENT (*c*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part.

Parties.

WHEREAS the purchaser has purchased of the vendor a certain messuage or tenement, garden and premises, situate at ——, in the county of ——, and the inheritance thereof in fee simple, at the price of £——; AND by an indenture dated the —— day of —— instant, and made between the vendor of the one part, and the purchaser of the other part, the vendor has, in consideration of the said sum of £——, granted and conveyed the said messuage and premises, with their appurtenances, unto the purchaser in fee simple: AND WHEREAS the title deeds and writings relating to the said premises have been lost or mislaid, and previously to the completion of the said purchase and payment of the said sum of £——, it was agreed between the said parties, that if in the event and within the period hereinafter mentioned the said title deeds should not be found, the vendor

Recital of purchase,

and conveyance in fee.

Recital of the loss of title deeds, and agreement for repurchase in case they should not be found within a limited period.

(*c*) Stamp, 6*d*.

IX. TO REPURCHASE IF TITLE DEEDS ARE NOT FOUND.

Testatum.

should repurchase the said messuage and premises at the price of [*purchase-money*], and upon the terms and conditions and in manner hereinafter appearing. NOW THESE PRESENTS WITNESS, and it is hereby agreed and declared between and by the parties hereto, that in case the purchaser shall at any time after the expiration of three years, and within the space of nine years, to be computed from the date hereof, be desirous to sell the same messuage and premises comprised in the said indenture of even date herewith, and of such his or their desire shall give unto the vendor, or leave at his usual place of residence, six calendar months' notice in writing, then and in such case, and at the expiration of the six calendar months for which such notice shall be given, if the deeds and writings mentioned in the first schedule hereto shall not previously thereto have been found and delivered to the purchaser, whole and undefaced, he the vendor, shall purchase the said messuage and premises, of and from the purchaser, at the price of £——: AND the purchaser hereby agrees that on payment of the said sum of £——, pursuant to the aforesaid agreement, he the purchaser shall, at the request, costs, and charges of the vendor, convey the said messuage and premises, with the appurtenances, unto the vendor in fee simple, or as he shall direct or appoint, free from incumbrances: AND FURTHER that in case the vendor shall be called upon to repurchase the said messuage and premises, in pursuance of the agreement hereinbefore for that purpose contained, the same premises shall, at the time of such repurchase, be in good and tenantable repair: AND upon the completion of such purchase, the same premises, together with the several fixtures mentioned in the second schedule hereto, shall be delivered to the vendor in as good order and condition, in all respects, as the same now are: PROVIDED ALWAYS, that these presents shall not, nor shall the above-recited indenture of the —— day of ——, 19—, be considered, construed, or taken to be a mortgage or security for money, or anything in the nature of a mortgage or security for money; nor shall the same give, or be construed to give, unto the vendor, any right, title, or equity, to redeem the said premises, upon payment of the said purchase-money or sum of £——: PROVIDED ALSO, that in case the deeds and writings mentioned in the first schedule hereto shall, previously to any such notice as aforesaid, or to the expiration of the said six calendar months, for which such notice shall be given or

Covenant by vendor, that if purchaser should require him to purchase premises within a limited period, before the deeds are found, he will purchase accordingly, at the sum now paid by purchaser.

Agreement by purchaser to convey accordingly.

Premises at the time of repurchase to be in good repair,

and fixtures in schedule in as good state as at present.

Agreement not to be deemed a mortgage.

In case the deeds should be delivered, agreement to be void.

IX. TO REPURCHASE IF TITLE DEEDS ARE NOT FOUND.

left as aforesaid, be found and delivered to the purchaser, whole and undefaced, then and in such case these presents and everything herein contained shall cease and be void.

The expressions "vendor" and "purchaser" in this agreement shall, where the context so admits, include his or their respective assigns and successors in title and the person or persons deriving title under him or them (*d*).

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

X. AGREEMENT *for* SALE *of* FREEHOLDS *in* CONSIDERATION *of a* PERPETUAL RENTCHARGE.

AN AGREEMENT (*e*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREBY it is agreed as follows:—

1. The vendor shall sell and the purchaser shall purchase for the consideration hereinafter mentioned, ALL THAT [*describe parcels*], in fee simple, with the appurtenances, free from incumbrances [except as hereinafter mentioned].

2. The consideration for the said purchase shall be a perpetual yearly rentcharge of £——, to be secured to the vendor as hereinafter mentioned.

3. [*Provision as to valuation of fixtures, &c., if required, see Special Conditions VII.*, ante, *p.* 275.]

4. [*Possession and outgoings,* ante, *p.* 310.]

5. [*Production of leases and tenancy agreements,* ante, *p.* 310.]

6. [*Delivery of abstract,* ante, *p.* 311; *and stipulations as to title, evidence of title, and other matters, see Conditions of Sale.*]

(*d*) This contract should be registered as an estate contract: see L. P. A. 1925, ss. 2 and 204; and L. C. A. 1925, ss. 10 (1) and (iv), 12 and 13. A caution should be applied for in regard to a contract relating to registered land.

(*e*) Stamp, 6*d*.

X. OF FREEHOLDS IN CONSIDERATION OF A PERPETUAL RENTCHARGE.

7. [*Delivery of requisitions*, ante, *p.* 311.]

8. [*Power to vendor to rescind if requisitions insisted on*, ante, *p.* 311.]

9. [*Expenses*, ante, *p.* 311](*f*).

10. [*Errors in description*, ante, *p.* 312.]

11. [*Identity*, ante, *p.* 311.]

12. The purchase shall be completed on the —— day of ——, at the office at ——, of Messrs. ——, the vendor's solicitors, at which time and place the vendor and all other necessary parties (if any) will execute a proper conveyance of the premises to the purchaser.

13. The assurance of the premises shall reserve to the vendor, and his assigns, out of the premises a perpetual yearly rentcharge of £——, to commence from the —— day of ——, and to be payable half-yearly on the —— day of —— and the —— day of ——, without any deduction, the first payment to be made on the —— day of —— next, and to be secured by the several powers and remedies given by sect. 121 of the Law of Property Act, 1925, in respect of rentcharges and other annual sums, and subject thereto shall be to the purchaser in fee simple. Such assurance shall contain the following covenants by the purchaser with the vendor:—(1) To pay the said rentcharge at the time and in manner aforesaid; and (2) to maintain and keep in repair the houses and buildings on the said land, and to rebuild the same from time to time when necessary, and so that there shall always be upon the said land houses and buildings of the clear yearly value of not less than £——. The said assurance shall also reserve to the owner for the time being of the said reserved rentcharge power, in case the purchaser, his heirs or assigns, shall refuse or neglect, wholly or in part, specifically to perform the covenant hereinbefore contained for maintaining, repairing, and rebuilding the said houses and buildings, specifically to perform the same, and for that purpose to enter upon the premises at any time [within twenty-one years from the death of the last survivor of His Majesty King George V. and his now

(*f*) As to expenses in this case, see Bythewood, Conveyancing, 3rd ed., vol. ix., p. 511.

living issue, or such longer period as may be allowed by law] (*g*), and to remain in possession and take the rents and profits of the land entered upon until the said covenant and the expenses incurred in the execution of such power shall be satisfied.

X. OF FREEHOLDS IN CONSIDERATION OF A PERPETUAL RENTCHARGE.

[*Add, if vendor is a trustee or mortgagee, a provision that he shall only give the statutory covenant against incumbrances*, ante, *p.* 313. *Add also, if required, a clause as to retention of deeds by vendor*, ante, *p.* 313.]

[*Interpretation clause* 16, ante, *p.* 314.]

In witness, &c.

CONVEYANCES.

INTRODUCTORY NOTE.

On the 1st day of January, 1926, there came into operation the Law of Property Act, 1925, the Settled Land Act, 1925, the Land Charges Act, 1925, the Administration of Estates Act, 1925, the Trustee Act, 1925, the Universities and Colleges Estates Act, 1925, the Land Registration Act, 1925, such parts of the Law of Property Act, 1922, as relate to the enfranchisement of copyhold land and the conversion of perpetually renewable leaseholds into long terms of years, and Schedules I., II., IX. and X. of the Law of Property (Amendment) Act, 1924.

These statutes are Consolidating Acts, but they incorporate considerable changes in relation to the sale and conveyance of land.

The following is an epitome of the principal changes resulting from these statutes which concern the form and contents of conveyances.

Law of Property Act, 1922.

Enfranchisement of copyhold land.

All copyhold land (including customary freeholds where the freehold was in the lord of the manor) ceases as from the end of

(*g*) See L. P. A. 1925, s. 4 (3), and s. 1 (2) (b) and (e), which appear to free a right of entry upon breach of covenant in connection with a rentcharge from the rule against perpetuities, but the interpretation of the section is not clear or free from difficulty, and, if desired, the words in brackets, or any words denoting the full extent of the period authorised by the rule, *i.e.*, a life or lives in being and twenty-one years afterwards, may be employed.

1925 to be copyhold or customary, and is converted (a) if the land was held for a life or lives and there was not a right of perpetual renewal then into leaseholds (see the Law of Property Act, 1922, s. 133), and (b) in all other cases into freehold.

Land converted into freehold is subject until 1936 to "manorial incidents" (which mean the former quit, chief or other rents, the former fines, reliefs, heriots and dues, forfeitures, and rights to timber) unless these are extinguished previously by a compensation agreement or by notice to ascertain compensation, in which case the compensation will be payable either in a lump sum (it *must* be paid in a lump sum where it is under 20*l*., or where the land is settled land, or is subject to a trust for sale and there is capital money out of which the compensation can be paid) or by instalments. Where it is payable by instalments the instalments will be charged on the land by way of rentcharge.

The land is subject also to the mineral and sporting rights preserved to the lord by the 12th Schedule to the Law of Property Act, 1922.

Para. 8 of the 12th Schedule to the Law of Property Act, 1922, contains detailed provisions as to the persons in whom the enfranchised land is to vest.

These rules are too lengthy to be set out here, but as a rule, if the land is settled it is vested in the tenant for life, if not, then it is vested in the tenant on the court rolls if he was admitted in fee simple and is not a mortgagee, and if there is no tenant admitted in fee simple, or the admitted tenant is a mortgagee, then in the person who at the end of 1925 had the best right to be admitted in fee simple.

Mortgagees of the fee simple, whether admitted or not, take a legal term of years. It follows that sales of the enfranchised land will be made in the same way as if the land had been originally freehold, subject to the mineral and sporting rights of the lord of the manor, unless these are released, and (except where compensation for extinction of manorial incidents has been paid in a lump sum) subject also for a time either to manorial incidents or to a compensation rentcharge.

So long as manorial incidents are subsisting, all conveyances must be produced to the steward of the manor.

Conversion of perpetually renewable leaseholds

All perpetually renewable leases made before 1926 are converted into leases for a term of 2,000 years, and where after 1925 a perpetually renewable lease is purported to be granted it will take

effect as a lease for 2,000 years. The rent payable and the covenants performable under the lease still continue, but certain further covenants and powers are to be implied, and where fines or heriots were payable on renewal they will be converted into additional rent, an aliquot part of the sum payable being payable during every year of the period or average period between renewal dates. There are special provisions for ascertaining the additional rent where it is not agreed, but it is to be hoped that, in most cases, the additional rent will be agreed and a memorandum of the agreement endorsed on the lease and counterpart. and leaseholds for lives into leaseholds for term of years.

Perpetually renewable sub-leases derived out of perpetually renewable leases similarly become leases for 2,000 years less one day.

Leases for a life or lives, or a term determinable on the dropping of a life or lives, or on marriage, which are not perpetually renewable, are converted into leases for 90 years, determinable on one month's notice on either side on the dropping of the life or lives or on marriage.

Law of Property Act, 1925, *Settled Land Act*, 1925, *Administration of Estates Act*, 1925.

A legal estate in land cannot be limited to more than four persons (see the Law of Property Act, 1925, ss. 34 and 36, and Trustee Act, 1925, s. 34) unless they are trustees for charitable, ecclesiastical, or public purposes, or are trustees of a term of years absolute limited by a settlement. (Trustee Act, 1925, s. 34 (3).) Restriction of legal title.

Under sect. 1 of the Law of Property Act, no estates in land can subsist or be conveyed or created at law except (a) an estate in fee simple absolute (*i.e.*, not determinable otherwise than by reverter under the Lands Clauses Acts, the Schools Sites Act, or other similar statutes) *in possession;* and (b) a term of years absolute as defined in sect. 205 (xxvii).

No interests or charges in or on land can subsist or be conveyed or created at law except (a) easements, rights, or privileges in fee simple or for a term of years absolute; (b) rentcharges in possession, either perpetual or for a term of years absolute; (c) charges by way of legal mortgage; (d) land tax, tithe rent charge, &c.; and (e) rights of entry exerciseable over or in respect of a term of years absolute or annexed to a legal rentcharge.

The above estates, interests and charges are referred to in the

Act as "legal estates," and all other estates or interests (including estates for life, estates tail, and estates in fee simple in remainder or reversion) which before 1926 could subsist or be created, still can subsist or be created, but are equitable estates or interests only, and all powers of appointment or other powers affecting land (except the statutory powers given to a legal mortgagee or the powers of an estate owner exerciseable in respect of his estate) operate in equity only. (Sect. 1 (3) and (7), and sect. 4 and Part I. of the 1st Schedule to the Law of Property Act, 1925.)

Words of limitation.

A conveyance to a grantee without words of limitation, which before 1926 would have given a life estate only, will pass an estate in fee simple (sect. 60 (1)) unless a contrary intention appears. It seems better, notwithstanding, to retain as a rule the words in fee simple (which are retained in the statutory forms scheduled to the Acts), but the word "heirs" now operates in equity as a word of purchase and not of limitation and should not be used. (See sect. 131, which abolishes the rule in *Shelley's Case*.) It will not be necessary in conveyances to corporations sole to convey to the corporation and his successors (sect. 60 (2)), but the corporation must be described by his corporate name.

Abolition of the rule in *Shelley's Case*.

Repeal of the Statute of Uses and creation of rentcharges and easements.

The Statute of Uses is repealed, but the repeal will not affect instruments which took effect before 1926. Legal rentcharges, easements, &c. will be created by grant or reservation. (Sects. 51, 52 and 65.) Easements will enure for the benefit of the land to which they are intended to be annexed. (Sect. 187.)

Infants.

Though an infant can still hold equitable interests a legal estate in land cannot be held by or conveyed to an infant. (Law of Property Act, s. 19.) A conveyance to an infant or infants of a legal estate executed after 1925 will operate as a declaration of trust only (Settled Land Act, s. 27), and if after 1925 a legal estate in land is conveyed to an infant or infants jointly with a person or persons of full age it will vest in the person or persons of full age upon trust for sale. (Law of Property Act, s. 19.)

Where on or after the 1st of January, 1926, an infant is, or if of full age, would be beneficially entitled in fee simple or for a term of years absolute, the land will be settled land (Settled Land Act, s. 1 (d)), and in that case, as well as in the case of the infant being tenant for life, the trustees of the settlement can exercise (as statutory owners) all the powers of a tenant for life (Settled Land Act, s. 26) subject to their executing a proper

vesting deed, unless the land is vested in a personal representative, in which case the personal representative (unless and until he executes a vesting deed vesting the land in the trustees of the settlement) can exercise the same powers under the direction of the trustees of the settlement. If there are no trustees of the settlement, and the land is not vested in personal representatives (apparently this contingency can only arise where the infant became entitled before 1926), it will vest in the Public Trustee. (Compare with this the former provisions of sects. 59 and 60 of the Settled Land Act, 1882.)

Lunatics.

Where a lunatic or defective is legal tenant in fee simple, or is tenant for life, or has the powers of a tenant for life, all dispositions by him will be made (as heretofore) by his committee or receiver under an Order in Lunacy or of the Court, but such disposition must be made in the name of and on behalf of the lunatic or defective. (Law of Property Act, s. 22; Settled Land Act, s. 28.)

Trustees for sale.

Where land is vested in trustees for sale it is not settled land, and the person entitled to the income is not tenant for life for the purposes of the Settled Land Act, and the trustees for sale will have all the powers of a tenant for life and of the trustees of a settlement, including a power to purchase other land with the proceeds of sale. (Law of Property Act, s. 28.)

Where prior to 1926 an Order of the Court was made authorising the person entitled to the income to exercise the powers of a tenant for life, that person can exercise the power in the names and on behalf of the trustees. (Law of Property Act, s. 29.)

A sole trustee not being a trust corporation, though he can sell and convey, cannot give a good receipt for the purchase-money. (Law of Property Act, s. 27 (2).)

Sales by personal representatives.

The real estate (including chattels real) of a testator vests, as heretofore, in his personal representatives, who can sell and convey for payment of debts, &c. Unless a notice in writing of an assent or conveyance by the personal representatives is endorsed or annexed to the probate or grant of administration, a purchaser for money or moneys worth from the personal representatives gets a good title against the devisee and those claiming under him, even if the purchaser has express notice that all debts are paid, provided that the purchaser obtains from the personal representatives a written statement that they have not assented or con-

veyed. Purchasers from a devisee must be careful, therefore, to see that notice of an assent or conveyance by the personal representatives is endorsed on the probate or grant of administration. All personal representatives must join in a conveyance to a purchaser, but as regards executors named in a will only those proving. (Administration of Estate Act, 1925, ss. 1, 2, 3 and 36.)

The real estate of an intestate (including chattels real) vests in his personal representatives in trust for sale. (Administration of Estates Act, s. 53.)

Where land is devised or bequeathed to infants for a legal estate the personal representatives of a testator have, during the minority, all the powers of a tenant for life. (Settled Land Act, s. 26.)

Abolition of tenancy in common as regards legal estates.

Though easements can still be held in common (Law of Property Act, s. 187), yet a legal estate cannot subsist or be created at law in an undivided share in land. (Law of Property Act, s. 34.)

Where after 1925 land is conveyed beneficially to grantees in undivided shares they (or, if there are more than four grantees, the first four named) will take as joint tenants upon trust for sale.

Where immediately prior to 1926 (Law of Property Act, 1st Schedule, Part IV.) land was held in possession in undivided shares at law or in equity, then—(a) If the entirety was held in trust for tenants in common by trustees or personal representatives, these trustees or representatives hold the entirety in trust for sale free from all incumbrances affecting the undivided shares and free from all incumbrances affecting the entirety which are not secured by a legal term of years absolute. (b) Where the land was held by not more than four tenants in common beneficially entitled free from incumbrances affecting the undivided shares, they hold the entirety as joint tenants in trust for sale subject to any incumbrances affecting the entirety. (c) If the entirety was settled land it is vested in the trustees of the settlement, who hold it as joint tenants upon trust for sale free from incumbrances affecting undivided shares and from incumbrances affecting the entirety which are not secured by a legal term of years; if there are no such trustees it vests in the Public Trustee unless and until such trustees are appointed. (d) In any other case the entirety vests in the Public Trustee in trust for sale unless and until new trustees are appointed in his place by persons

interested in more than an undivided half of the land or by the Court.

It is to be observed that the Public Trustee is not to act except on the written request of persons interested in more than an undivided half of the land and that all incumbrances affecting the entirety become (where the nature of the incumbrances admits) incumbrances secured by legal terms of years absolute.

Mortgagees.

After 1925 mortgages of an estate in fee simple can only be made either by demise for a term of years absolute or by a charge by deed expressed to be by way of legal mortgage (which will include a deed made by way of statutory mortgage in the form given in the 4th Schedule to the Law of Property Act, 1925). The fee simple in the mortgaged land must remain in the mortgagor; mortgages in fee simple made before 1926 are converted into mortgages for a long term of years, the fee simple reverting to the mortgagor. (See the Law of Property Act, ss. 85 and 87, and 1st Schedule, Part VII.)

Similarly, mortgages of leaseholds can only be made by sub-demise, and the leasehold reversion must remain in the mortgagor, and where before 1926 mortgages were made by assignment they are converted into mortgages by sub-demise, the leasehold reversion going back to the mortgagor. (See the Law of Property Act, ss. 86 and 87, and 1st Schedule, Part VIII.)

Nevertheless, where the mortgage affects a fee simple, the mortgagee selling under his statutory powers can (and indeed must) sell and convey the fee simple (Law of Property Act, s. 88), and where the mortgage affects a leasehold interest the mortgagee selling under his statutory powers can (and must) sell and assign the whole term granted by the lease which the mortgage affects. (Law of Property Act, s. 89.)

The mortgagee is empowered to convey the fee simple or the leasehold reversion, as the case may be, in the name of the person entitled to the fee simple or the leasehold reversion (Law of Property Act, ss. 88 and 89), but he need not do so (Law of Property Act, s. 9), and had better convey in his own name. All conveyances by mortgagees made after 1925 are presumed to be made under the statutory power unless a contrary intention appears. (Law of Property Act, s. 104 (3).)

Conveyances of settled land by

As above mentioned, land which is subject to a trust for sale is not settled land, but in other respects the definition contained in

tenant for life, &c.

the Settled Land Acts, 1882 to 1890, of settlements, settled land and tenants for life, and persons having the powers of a tenant for life, is in effect retained and enlarged. In particular, land which is subject to a jointure rentcharge, or to portions, is settled land (Settled Land Act, s. 1 (v)), and if it is vested subject to the jointure, or portions, in a person of full age beneficially entitled for an estate in fee simple or for a term of years absolute, that person will have the powers of a tenant for life. (Sect. 20 (ix).)

Settlements by deed made after 1925 have to be effected by two deeds, namely, a vesting deed, which will convey the property to the tenant for life or statutory owner (statutory owner means the settlement trustees during a minority or any other person who, while there is no tenant for life, has the powers of a tenant for life) on the trusts affecting the settled land, and a trust instrument, which will set out the trusts. (Settled Land Act, ss. 4 and 5.) Settlements by will taking effect after 1925 will be treated as trust instruments, and the personal representatives of the deceased must execute a vesting conveyance or vesting assent in favour of the tenant for life or statutory owner. (Sect. 6.)

Settlements subsisting on 1st January, 1926, are converted into trust instruments, and the trustees of the settlement must execute a vesting deed for vesting the legal estate in the tenant for life or statutory owner unless the land is vested in personal representatives, in which case the personal representatives must execute a vesting conveyance or vesting assent for vesting the legal estate in the tenant for life or statutory owner.

Under the Settled Land Acts, 1882 to 1890, a tenant for life sold under a power and not in virtue of any estate vested in him. But under the Settled Land Act, 1925, the tenant for life or statutory owner has the fee simple or the term of years absolute, which is the subject of the settlement vested in him under the vesting deed, and any conveyance or other disposition by him must be a sale or disposition of or out of the estate or interest vested or declared to be vested in him by the vesting deed. (Sect. 72.)

No sale or disposition can be made (even if the settlement was made before 1926, and even if the tenant for life or statutory owner has the fee simple vested in him) till a vesting deed has been executed. (Sect. 13.) Consequently in all conveyances by a tenant for life or statutory owner the vesting deed only, and not

the settlement, will be recited, and in most cases recital of the vesting deed will be the only recital as to title.

The powers of sale and exchange which were given to a tenant for life by the Settled Land Acts, 1882 to 1890, are re-enacted with slight additions and modifications. (Sects. 38 to 40.) So also is the power to convey. (Sect. 72.)

Covenants for title.

The covenants for title implied by a vendor or mortgagee conveying as beneficial owner, trustee, &c., are modified in some respects, but this will not affect the forms of conveyances.

Covenants for title can be varied or extended. (Law of Property Act, s. 76, and 2nd Schedule, Parts I. to VI. inclusive.)

Implied covenants in conveyances subject to rents.

Where land is sold or exchanged subject to a subsisting rentcharge or an apportioned part of a subsisting rentcharge (apportioned without the consent of the chargee), a covenant by the grantee is implied to pay the rentcharge, or part of the rentcharge, and indemnify against it. (Law of Property Act, s. 77.)

Where leasehold land is sold or exchanged, then if the assignment includes the whole of the land in the lease, or the lessor joins or has joined in apportioning the rent, a covenant by the assignee is implied for payment of rent or apportioned rent and performance of the lessess' covenants and indemnity. And if part only of the land in the lease is assigned, and the rent is or has been apportioned without the consent of the lessor, cross covenants by assignor and assignee are implied for payment of rent and performance of lessees' covenants and indemnity.

Where part of land affected by a rentcharge is sold or exchanged subject to or discharged from the entirety of the rentcharge without the consent of the owner of the charge, then a covenant by the grantee with the grantor, or by the grantor with the grantee, as the case may be, is implied for payment of the rentcharge and indemnity.

Where without the consent of the lessor part of the land comprised in a lease is sold or exchanged subject to or free from the rent, then a covenant by the assignee with the assignor, or by the assignor with the assignee, as the case may be, is implied for payment of the rent and indemnity.

These implied covenants may be varied or extended, and a charge on the land taken or retained by the covenantor may be given to secure performance. (Law of Property Act, s. 77, and 2nd Schedule, Part VII. to end.)

Powers of distress and entry for enforcement of these implied covenants are given by sect. 189 of the same Act.

Covenants relating to land.

Sects. 78, 79 and 80 of the Law of Property Act make it clear that covenants relating to land, including restrictive covenants, may be expressed to be by the covenantor with the covenantee simply without any mention of "assigns or successors" or other persons. It should be borne in mind, however, that in the case of restrictive covenants the land benefited, as well as the land bound, should be clearly defined, and the restrictive covenants should be registered as a land charge.

Conveyances and covenants by a person to and with himself.

Any person may convey or vest land to or in himself, and two or more persons may convey and are to be deemed always to have been able to convey to any one or more of themselves (sect. 72 (3) (4) of the Law of Property Act), and all covenants before or after 1st January, 1926, entered into by a person with himself and others will be construed and can be enforced as if the covenant had been entered into with the others only. (Sect. 82 of the Law of Property Act.)

Equitable interests.

All equitable interests in land which could have been validly created prior to 1926 may still be created and disposed of (sect. 4), and equitable estates tail may be created by settlement or will in leaseholds and other personal estate as well as in freeholds. (Sect. 130.)

A conveyance of an equitable estate tail operating to bar the estate tail will not require enrolment (sect. 133), and the person to whom notice of an assignment of any equitable interest is to be given will be the trustees of the settlement (sect. 137) unless a trust corporation is nominated to receive notices. (Sect. 138.) As to notices and service generally, see sect. 196.

Conveyances of equitable interests under settlements or wills will be in much the same form as would have been used before 1926 where the legal estate was in the trustees of the settlement or will, but the use of the word "heirs" must be avoided.

Over-reaching of equitable interests.

Under sect. 2 of the Law of Property Act, 1925, conveyances of a legal estate by a tenant for life or statutory owner under the Settled Land Act, 1925, for money or money's worth will overreach all equitable interests not having priority over the settlement, and conveyances by trustees for sale will also overreach all equitable interests not having priority over the trust for sale, and

conveyances by mortgagees will overreach all equitable interests not having priority over the mortgage, and conveyances under an Order of the Court will overreach all equitable interests bound by the order.

Moreover, if a person owning a legal estate in land which is not subject to a trust for sale, or a settlement (the extended meaning given to "settlements" and "settled land" by the Settled Land Act, 1925, and the statutory trusts for sale created by the Law of Property Act, 1925, must be kept in mind), but which is subject to an equitable interest, disposes of his estate to trustees for sale, being a trust corporation or persons approved by the Court, then the equitable interest will not have priority over the trust for sale, and the trustees can sell free from it unless it is one of the equitable interests (such as equitable mortgages by deposit of deeds) which are especially excepted.

As regards land subject to a settlement, or to a trust for sale, or sold by a mortgagee, or under an Order of the Court, the section only enacts the previous law. The power given to an estate owner who holds subject to an equitable interest to create a trust for sale which will overreach the equitable interest is new, but if an estate owner resorts to it the purchase-money on any sale will not be paid to him but to the trustees.

The following minor points may also be noted.

Sect. 57 of the Law of Property Act, 1925, provides that a deed may be described as a deed simply, or as a conveyance, or mortgage, &c. Any deed could, in fact, have been so described before the Act, and this section makes no difference in the law. But it appears that in the future the ordinary practice will be to describe deeds in this way and not as indentures, and in the following Precedents this course is adopted. The editors own, however, to some regret for the passing of the word "Indenture," for though the deeds are not in fact indentures, it has been convenient to have a general term covering all varieties of deeds *inter partes*.

Sect. 51 of the Law of Property Act, 1925, repeats the former provision in sect. 4 of Conveyancing Act, 1881, that the word "grant" is not necessary to convey land. It is observed that in making it unnecessary to use the word "grant" the Act has not made it necessary (as has been suggested occasionally) to use the word "convey" either for the purpose of passing the property or

of implying covenants for title. Any word can be used which shows an intention to transfer the property. In these Precedents the word "grant" is preferred as a rule to the word "convey."

Any person can now convey to himself, and several persons can convey and are to be deemed always to have been able to convey to any two or more of themselves. (Law of Property Act, 1925, s. 72; as to covenants by a person with himself and others, see s. 82.) It is to be observed, however, that a "release" by one or more joint tenants to the other joint tenants is valid and effectual. (See sect. 36 (2).)

On the whole, apart from the necessary alterations in recitals, the effect of the new legislation on the form of conveyances is not very great. The changes effected are in the persons to convey rather than in the conveyance itself.

One result, however, of the Settled Land Act, 1925, requires to be noted. Under sect. 1 (v) of that Act land held in fee simple subject to an equitable charge becomes settled land, and the owner has the powers of a tenant for life and is entitled to have a vesting deed executed in his favour. Sect. 13 of the Settled Land Act makes it impossible for him to convey a legal estate till a vesting deed is executed, and sect. 42 (4) (ii) of the Law of Property Act, 1925, makes it impossible for him to agree to sell the equitable fee simple alone apart from the legal estate. The result is that an owner who before the Act bought a house or land subject to a jointure rentcharge or other equitable charge against which he was indemnified will not be able to sell during the subsistence of the charge except under a vesting deed or under sect. 21 of the Settled Land Act, 1925, and if he so sells the purchase price will not be paid to him, and he cannot get it while the jointure or charge is subsisting unless he either persuades the trustees who hold it to commit a breach of trust for his benefit or obtains the consent of the jointress or charge owner, which he is not likely to be able to do. It is to be hoped that this hardship will be removed by amending legislation without delay.

Searches.

The searches to be made by a purchaser will be as follows:—

1. *Lis pendens* for five years back. (Land Charges Act, s. 2.)
2. Writs and orders affecting land for five years back. (Land Charges Act, s. 6.)

3. Annuities registered before 1926 (see Land Charges Act, 1925, s. 4) back to the day on which the person searched against acquired the property or attained twenty-one (whichever is latest). This search will be made as a rule only back to the last purchase or mortgage, and need not be made on sales under the Settled Land Act, 1925 (Settled Land Act, s. 72), or by trustees for sale (Law of Property Act, 1925, s. 28), or by personal representatives (Administration of Estates Act, 1925, s. 28).

4. Deeds of arrangement affecting land (Land Charges Act, 1925, s. 8) back to 1st January, 1889 (or to the last purchase or mortgage), until 1927, but only for five years back after 1926.

5. For land charges registered under the Act of 1888 back to 1st January, 1889, or the last conveyance or mortgage. For all other land charges back to 1st January, 1926, or back to the date of the last official certificate of search (if any).

6. Where the land is in Middlesex or Yorkshire the local registry must be searched back to the last purchase or mortgage. As regards Yorkshire, search for general equitable charges, restrictive costs, equitable easements, and estate contracts (which elsewhere come under the general head of land charges) will be made in the special department created under sect. 10 (6) of the Land Charges Act, 1925.

(7) Sect. 15 of the Land Charges Act, 1925, provides for the registration of "local land charges" (*i.e.*, charges of local authorities under the Public Health Act or otherwise). As to these charges enquiry will have to be made of the local authority till rules are made with regard to them.

In future search for *lis pendens,* writs and orders, and land charges subsequent to 1925 must be made even against trustees, personal representatives, and mortgagees on sale by them. Searches should be made immediately before completion.

It must be remembered that the registration of any instru-

ment or matter required or authorised to be registered under the Land Charges Act, 1925, is notice to all the world as from the date of registration so long as the registration continues in force, and land charges include (*inter alia*) restrictive covenants, puisne mortgages, &c. It is essential therefore, for a purchaser to search, and as a rule an official certificate of search should be applied for. This can be obtained by making a requisition in the prescribed form specifying the name of the person against whom search is to be made. (See Lands Clauses Act, 1925, s. 1.)

As to registered land, see Land Registration Rules, 1925.

Stamps.

Stamp Act, 1891.

The stamping of conveyances is regulated by the Stamp Act, 1891, ss. 54 to 61, and the first schedule to that Act as amended by the Finance (1909-10) Act, 1910, s. 73. The following scale of stamp duties is provided by the schedule to the Act of 1891:—

Conveyance or Transfer, whether on sale or otherwise:—	£	s.	d.
(1.) Of any stock of the Bank of England .	0	7	9
(2.) Of any stock of the Government of Canada inscribed in books kept in the United Kingdom, or of any Colonial stock to which the Colonial Stock Act, 1877, applies—			
For every 100*l.*, and also for any fractional part of 100*l.*, of the nominal amount of stock transferred . .	0	2	6
And see sect. 62.			

Conveyance or Transfer on sale,			
Of any property (*except such stock as aforesaid*),			
Where the amount or value of the consideration for the sale does not exceed 5*l.* . . .	0	0	6
Exceeds 5*l.*, and does not exceed 10*l.* . .	0	1	0
„ 10*l.* „ 15*l.* . .	0	1	6
„ 15*l.* „ 20*l.* . .	0	2	0
„ 20*l.* „ 25*l.* . .	0	2	6
„ 25*l.* „ 50*l.* . .	0	5	0

	£	s.	d.
Exceeds 50*l.*, and does not exceed 75*l.* . .	0	7	6
„ 75*l.* „ 100*l.* . .	0	10	0
„ 100*l.* „ 125*l.* . .	0	12	6
„ 125*l.* „ 150*l.* . .	0	15	0
„ 150*l.* „ 175*l.* . .	0	17	6
„ 175*l.* „ 200*l.* . .	1	0	0
„ 200*l.* „ 225*l.* . .	1	2	6
„ 225*l.* „ 250*l.* . .	1	5	0
„ 250*l.* „ 275*l.* . .	1	7	6
„ 275*l.* „ 300*l.* . .	1	10	0
„ 300*l.*			
For every 50*l.*, and also for any fractional part of 50*l.*, of such amount or value . . .	0	5	0

And see sects. 54, 55, 56, 57, 58, 59, 60, and 61.

CONVEYANCE or TRANSFER by way of security of any property (*except such stock as aforesaid*), or of any security.

See "*Mortgage*," &c., and "*Marketable Security*."

CONVEYANCE or TRANSFER of any kind not hereinbefore described 0 10 0

And see sect. 62.

Stamp duty doubled by the Finance Act, 1910.

By sect. 73 of the Finance (1909-10) Act, 1910, it is enacted that the stamp duties chargeable under the heading "Conveyance or Transfer of Sale of any Property" in the first schedule to the Act of 1891 shall be double those specified in that schedule, but this section shall not apply to the transfer of stock or marketable securities as defined in sect. 122 of the Act of 1891, or to a conveyance or transfer where the consideration does not exceed 500*l.*, and the instrument contains a statement that the transaction thereby effected does not form part of a larger transaction or series of transactions in respect of which the total amount of the consideration exceeds 500*l.* This makes it necessary, in order to save duty, to insert in every conveyance where the transaction does not exceed 500*l.* a statement to the effect mentioned in the Act. For the form of such a statement, see *post*, p. 360.

Statement as to value.

Sects. 54 to 62 of the Stamp Act, 1891.

Sect. 54 of the Stamp Act, 1891, makes a "Conveyance on Sale" include every instrument and every decree or order whereby any property, or any estate or interest in property, upon the sale thereof is transferred to or vested in a purchaser.

Sect. 55 deals with how duty is to be charged where the consideration consists of stock or marketable securities; sect. 56 with the duty payable where the consideration is periodical payments; sect. 58 provides for splitting up or apportioning the duty where required by the nature of the transaction; sect. 59 makes certain contracts chargeable with duty on conveyances (see "Contracts," Preliminary Note); sect. 60 deals with the sale of an annuity or right not before in existence; and sect. 62 provides that every instrument, decree, or order whereby property (except on sale or mortgage) is transferred or vested is to be charged with duty as a conveyance or transfer of property.

Conveyances *inter vivos*.

By sect. 74 of the Finance (1909-10) Act, 1910, any conveyance *inter vivos* not being in favour of a purchaser or incumbrancer, is made chargeable with the like stamp as a conveyance on sale, except in the case of a conveyance to an incorporated body precluded from dividing profits for the purpose of an open space, or for its preservation for the benefit of the nation, or a conveyance for nominal consideration for securing a loan, or for effectuating the appointment or retirement of a trustee, or under which no beneficial interest passes, or made by a trustee to a beneficiary, or a disentailing assurance not limiting any new estate other than an estate in fee simple in the person disentailing the property.

PRECEDENTS.

I. CONVEYANCE *of* FREEHOLDS *by* VENDOR SEISED *in* FEE SIMPLE *to a* PURCHASER *in* FEE SIMPLE, *without* RECITALS (*a*).

I. OF FREEHOLDS TO A PURCHASER WITHOUT RECITALS.

THIS CONVEYANCE (*b*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part, WITNESSETH that, in consideration of the sum of £——, now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged) (*c*), the vendor hereby, as beneficial owner (*d*), grants unto the purchaser ALL THAT [*set out parcels*] (*e*), TO HOLD unto the purchaser in fee simple (*f*).

Parties. *Testatum.* Conveyance. Parcels. *Habendum.*

(*a*) The above precedent is the simplest form of a conveyance in fee, by a vendor who is seised in fee, and is *sui juris*. It is applicable equally where the sale is by auction as where it is by private contract. All specific reference to a written contract for sale, or to the particulars and conditions on a sale by auction, should, if possible, be avoided. This form may be used for a conveyance by a married woman seised in her own right, who was married, or whose title accrued after the commencement of the Married Women's Property Act, 1882.

As to the form in the text.

(*b*) Stamp, *ad valorem* on the amount of the purchase-money.

Stamp.

(*c*) With respect to the effect of the receipt in the body of the deed, see L. P. A. 1925, ss. 67 and 68.

Receipt clause.

(*d*) This phrase implies the statutory covenants for title on the part of the person who conveys: these covenants are contained in L. P. A. 1925, 2nd Sched., Part I. The use of the word "grant" is retained in this and the following precedents, but is not necessary in order to convey hereditaments, corporeal or incorporeal: see the L. P. A. 1925, s. 51.

Implied covenants for title.

(*e*) The parcels will, as a rule, be taken from the contract for sale. Forms of description will be found on pp. 482 to 484, which can be used if necessary.

(*f*) As to the omission of general words and estate clause, see the L. P. A. 1925, ss. 62 and 63. If it is intended to secure to the purchaser the grant of rights and easements, which formerly existed, but which have been extinguished by unity of possession, the following words may be added at the end of the parcels:—

General words.

"TOGETHER with all rights, easements, and appurtenances apper-

I. OF FREEHOLDS TO A PURCHASER WITHOUT RECITALS.

Statement as to value.

[And it is hereby declared and certified that the transaction hereby effected does not form part of a larger transaction, or of a series of transactions, in respect of which the amount or value, or the aggregate amount or value, of the consideration exceeds the sum of 500*l.*].

IN WITNESS, &c.

II. CONVEYANCE *of* FREEHOLDS *to a* PURCHASER *in* FEE. RECITAL *of* VENDOR'S SEISIN, *&c.* ACKNOWLEDGMENT *and* UNDERTAKING *as to* DEEDS. (VARIATIONS *in notes where* PART *of the* LAND *is* REGISTERED *and the* PURCHASE-MONEY *is not* APPORTIONED *by the* CONTRACT).

Parties.

THIS CONVEYANCE (*g*), is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS the vendor is seised of, or entitled to the hereditaments hereby assured for an estate in

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taining to the premises, or any part thereof, or reputed to appertain thereto, or now or at any time heretofore demised, held, or enjoyed with, or reputed or known as part of, or appurtenant to the premises or any part thereof."

Words of limitation.

Words of limitation are not necessary: see L. P. A. 1925, s. 60; but it is advisable to retain them.

If the land is in a compulsory district, and the owner of the legal estate is under any liability, the following covenant should be added:—

Covenant by purchaser to register.

"The purchaser hereby covenants with the vendor that he the purchaser will procure himself to be registered as proprietor of the hereditaments hereby assured under the Land Registration Act, 1925, and will produce the land certificate to the vendor or his solicitor within fourteen days from the date hereof."

Express covenants for title.

As to the insertion of the statement as to value, see Preliminary Note, *supra*, p. 357. If for any reason it should be desired to insert in a conveyance by way of sale of freeholds, express covenants for title, the words "as beneficial owner" will be omitted in the operative part of the deed, and such of the covenants set out in Part I. of the 2nd Sched. to L. P. A. 1925, as are desired will be inserted after the words "in fee simple."

(*g*) Stamp, *ad valorem*.

fee simple free from incumbrances (*h*), and has agreed to sell the same unto the purchaser for the sum of £——; AND WHEREAS the deeds and documents specified in the schedule hereto are retained by the vendor, and it has been agreed that he shall give the acknowledgment and undertaking hereinafter contained respectively in regard to the same. NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner (*i*), grants unto the purchaser, ALL THAT [*set out parcels* (*k*)], TO HOLD unto the purchaser in fee simple: AND the vendor hereby acknowledges the right of the purchaser to the production of the several deeds and documents

Recitals: of vendor's seisin and agreement for sale; of agreement as to deeds.

Testatum.

Conveyance.

Parcels:

Habendum.

Acknowledgment and Registered land.

(*h*) As to recitals becoming evidence, see L. P. A. 1925, s. 45 (1) and (6). If any part of the land is registered, and the purchase-money is not apportioned by the contract between registered and unregistered land, then the recital of seisin should be followed by a recital of registration—

"WHEREAS the vendor is registered under the Land Registration Act, 1925, as proprietor of the hereditaments hereinafter [secondly] described and assured with a —— ["possessory" *or* "absolute," *as the case may be*] title under the heading, District ——, Parish ——, and Title No. ——,"

and there should be inserted at the end of the deed the following covenant:—

"The vendor hereby covenants with the purchaser that he will forthwith execute and deliver to the purchaser an instrument of transfer already prepared of the hereditaments hereinbefore [secondly] described and assured to the purchaser ready for registration under the said Land Registration Act, 1925, and will hand to him the land certificate thereof, and will do every act, matter or thing necessary to enable the purchaser to be registered as proprietor of the said last mentioned hereditaments."

If all the land is registered, or if the purchase-money is apportioned by the contract between registered and unregistered land, a registered transfer will in most cases suffice for the registered land. For forms of transfer of registered land, see *post*, pp. 485 to 493.

(*i*) As to the covenants for title implied by this phrase, see L. P. A. 1925, Second Schedule, Part I.

(*k*) As to parcels, see note (*e*) on p. 359, *ante*.

II. OF FREEHOLDS TO A PURCHASER WITH RECITALS, ACKNOWLEDGMENT, &C. AS TO DEEDS.

specified in the schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof (*l*).

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

undertaking as to muniments.

III. CONVEYANCE *by* ONE VENDOR SEISED *in* FEE SIMPLE *to* ONE PURCHASER *of* FREEHOLDS (*formerly* COPYHOLDS, *but* ENFRANCHISED *by the Law of Property Act*, 1922), *where there has been no* COMPENSATION AGREEMENT (*m*).

Parties.

THIS CONVEYANCE (*n*) is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part,

Recitals of vendor's seisin and agreement for sale.

WHEREAS the vendor is seised in fee simple of the hereditaments hereinafter described, which formerly were copyholds held of the Manor of ——, and are subject to manorial incidents, AND WHEREAS the vendor has agreed to sell the said hereditaments to the purchaser at the price of £——,

Testatum.

NOW THESE PRESENTS WITNESS that in pursuance of the said agreement and in consideration of the sum of £—— paid to the vendor by the purchaser (the receipt of which the vendor hereby acknowledges), the vendor hereby, as beneficial owner,

Habendum.

grants to the purchaser ALL [*set out parcels*], TO HOLD unto the purchaser in fee simple, subject to the manorial incidents

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(*l*) As to retainer of documents of title, see L. P. A. 1925, s. 45 (9), and as to the effect of the acknowledgment and undertaking as to deeds, see the same Act, sect. 64. For the protection of the purchaser, a memorandum of this acknowledgment, &c. should, if possible, be endorsed on the last deed by which the whole property was conveyed to the vendor, or his ancestor or testator.

(*m*) Under sect. 129 of the L. P. A. 1922, this deed must be produced to the steward of the manor and endorsed by him within six calendar months of the date of execution, unless it comes within sub-sect. (10) of that section.

(*n*) Stamp, *ad valorem*.

affecting the same land saved by Part V. of the Law of Property Act, 1922 (*o*), and subject also to the rights preserved to the lord of the said manor by the twelfth schedule to the same Act.

III. BY ONE VENDOR TO ONE PURCHASER WHERE NO COMPENSATION AGREEMENT.

[*Acknowledgment and undertaking for production of documents (if required), see* ante, *p.* 361.]

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

IV. CONVEYANCE *by* ONE VENDOR SEISED *in* FEE SIMPLE *to* ONE PURCHASER *of* FREEHOLDS (*formerly* COPYHOLDS, *but* ENFRANCHISED *by the Law of Property Act*, 1922), *subject to a* COMPENSATION RENTCHARGE (*p*) *in respect of* MANORIAL INCIDENTS, *and in respect of the* RIGHTS PRESERVED *to the* LORD OF THE MANOR *by the twelfth schedule to the Law of Property Act*, 1922.

THIS CONVEYANCE (*q*) is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part. Parties.

WHEREAS the vendor is seised in fee simple of the pieces or parcels of land hereinafter described, which formerly were copyhold of the Manor of ——, and are subject to the compensation rentcharge hereinafter mentioned, but otherwise are free from incumbrances. Recital of seisin of vendor subject to compensation rentcharge.

AND WHEREAS by a compensation agreement, dated the —— day of ——, and made between —— and ——, it was agreed that the compensation for the extinguishment of the manorial rights saved by Part V. of the Law of Property Act, 1922, affecting the said pieces or parcels of land, and of the rights of the lord of the Recital of compensation agreement.

(*o*) Manorial incidents will be extinguished at the expiration of ten years from 1st January, 1926, if not extinguished previously: see L. P. A. 1922, s. 138.

(*p*) As to compensation agreements and compensation rentcharges, see L. P. A. 1922, s. 138. In the present precedent the agreement is assumed to have been effected independently of the C. A. 1894.

(*q*) Stamp, *ad valorem*.

IV. BY ONE VENDOR TO ONE PURCHASER IN RESPECT OF MANORIAL INCIDENTS.

manor in or to any mines or minerals in or under the said pieces or parcels of land, and the sporting and other rights affecting the said pieces or parcels of land preserved by the twelfth schedule to the said Act should be the principal sum of £——, to be paid by twenty equal instalments, the first instalment to be paid on the —— day of ——, with interest at five and a half per cent. per annum, on the said principal sum from the date of the said agreement, and a further instalment with interest at a like rate on so much of the said principal sum as for the time being should remain unpaid, to be paid on every subsequent day of —— until the said principal sum fully should be paid, all interest up to date being paid with the instalments, and that so long as any of the said instalments and interest should remain payable, a terminable and variable rentcharge, commencing from the date of the said agreement and accruing from day to day, but payable at the same time as the instalments and interest, should issue out of the said land of an amount equal to the said instalments and interest from time to time payable, and so as to secure the same.

Recital of agreement for sale.

AND WHEREAS the vendor has agreed to sell the said pieces or parcels of land to the purchaser, subject to the said rentcharge, at the price of £——;

Testatum.

NOW THESE PRESENTS WITNESS that in pursuance of the last-mentioned agreement, and in consideration of the sum of £—— paid to the vendor by the purchaser (the receipt of which the vendor hereby acknowledges), the vendor hereby, as beneficial owner, grants to the purchaser ALL [*set out parcels*], TO HOLD unto the purchaser in fee simple, subject to the said rentcharge subsisting under the said compensation agreement.

Habendum.

[*Acknowledgment and undertaking for production of documents (if required), see* ante, *p.* 361.]

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

V. CONVEYANCE *by* ONE VENDOR SEISED *in* FEE SIMPLE *to* ONE PURCHASER *of* FREEHOLDS (*formerly* COPYHOLDS, *but* ENFRANCHISED *by the Law of Property Act*, 1922), *where* MANORIAL INCIDENTS *have been* EXTINGUISHED *by a* COMPENSATION AGREEMENT PROVIDING *for* PAYMENT *in a* GROSS SUM (*r*), *but the* RIGHTS PRESERVED *to the* LORD OF THE MANOR *by the twelfth schedule of the Act* (*s*) *have not been* EXTINGUISHED.

V. BY ONE VENDOR TO ONE PURCHASER WHERE MANORIAL INCIDENTS EXTINGUISHED.

THIS CONVEYANCE (*t*) is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part, WHEREAS the vendor is seised in fee simple of the pieces or parcels of land hereinafter described, which formerly were copyhold of the Manor of ——, and are subject to the rights preserved to the lord of the said manor by the twelfth schedule to the Law of Property Act, 1922, but are not subject to manorial incidents, which have been extinguished under a compensation agreement, dated, &c., and made, &c., nor to the compensation provided for by the said compensation agreement, which was paid in a gross sum: AND WHEREAS the vendor has agreed to sell the said pieces or parcels of land to the purchaser at the price of £——, NOW THESE PRESENTS WITNESS that in pursuance of the last-mentioned agreement, and in consideration of the sum of £—— paid to the vendor by the purchaser (the receipt of which the vendor hereby acknowledges), the vendor hereby, as beneficial owner, grants to the purchaser ALL [*set out parcels*], TO HOLD unto the purchaser in fee simple, subject to the rights preserved to the lord of the said manor by the twelfth schedule to the Law of Property Act, 1922.

Parties.

Recital of seisin of vendor.

Recital of agreement for sale.

Testatum.

Habendum.

[*Acknowledgment and undertaking for production of documents (if required), see* ante, *p.* 361.]

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

(*r*) As to these rights, see L. P. A. 1922, Sched. XII. (5).

(*s*) Under sect. 139 (v) of the L. P. A. 1922, the compensation for the extinction of manorial incidents must be paid in a gross sum if it does not exceed 20*l*., and where it exceeds 20*l*. it may be paid in a gross sum if the parties so agree. In this precedent the compensation is assumed to have been paid in a gross sum. (*t*) Stamp, *ad valorem*.

VI. BY ONE VENDOR WHERE NO COMPENSATION AGREEMENT.

VI. CONVEYANCE *by* ONE VENDOR SEISED *in* FEE SIMPLE *of* FREEHOLD LAND INDISTINGUISHABLY INTERMIXED *with* LAND *formerly* COPYHOLD, *but* ENFRANCHISED *by the Law of Property Act*, 1922, *where there has been no* COMPENSATION AGREEMENT (*u*).

Parties.

THIS CONVEYANCE (*x*) is made the —— day of ——, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part.

Recitals: of seisin of vendors, &c.;

WHEREAS the vendor is seised in fee simple of the hereditaments hereinafter described, part of which formerly was copyhold held of the Manor of ——;

that freehold or copyhold land indistinguishable;

AND WHEREAS that part of the said hereditaments which formerly was copyhold is intermixed with the remainder of the said hereditaments and cannot be identified and distinguished;

of agreement for sale.

AND WHEREAS the vendor has agreed to sell the said hereditaments to the purchaser at the price of £——:

Testatum.

NOW THESE PRESENTS WITNESS that in pursuance of the said agreement, and in consideration of the sum of £—— paid to the vendor by the purchaser (the receipt of which the vendor hereby acknowledges), the vendor hereby, as beneficial owner, grants to the purchaser ALL [*set out parcels*], TO HOLD unto the purchaser in fee simple, subject as to such part of the said hereditaments as formerly was copyhold, to the manorial rights affecting the same saved by Part V. of the Law of Property Act, 1922, and also to the rights preserved to the lord of the manor by the twelfth schedule to the same Act.

Habendum.

[*Acknowledgment and undertaking for the production of documents (if required), see* ante, *p.* 361.]

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

(*u*) Under sect. 129 of the L. P. A. 1922, this deed must be produced to the steward of the manor and endorsed by him within six calendar months of the date of execution, unless it comes within sub-sect. (10) of that section.

If desired, application can be made to the Minister of Agriculture and Fisheries to declare what part of the land is subject to manorial incidents under sect. 139 (vi) of the L. P. A. 1922.

(*x*) Stamp, *ad valorem*.

VII. ASSIGNMENT *of* LEASEHOLD HOUSE *by one* VENDOR (*not the* ORIGINAL LESSEE) (*y*), *&c. to a* PURCHASER.

VII. ASSIGNMENT OF LEASEHOLDS.

THIS ASSIGNMENT (*z*), is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part:

Parties.

WHEREAS by an indenture of lease dated the —— day of ——, and made between [*parties*], ALL [*set out parcels in full from lease*], were demised unto the lessee for the term of —— years, from the —— day of ——, at the yearly rent of ——, and subject to the covenants on the lessee's part and conditions therein contained (*a*): AND WHEREAS under or by virtue of certain mesne assignments and acts in the law, and ultimately by an indenture of assignment, dated, &c., and made between [*parties*], the premises comprised in the hereinbefore recited indenture of lease have become, and are now vested in, the vendor for the unexpired residue of the said term: AND WHEREAS the vendor has agreed to sell to the purchaser the said premises for the sum of £—— (*b*). NOW THESE PRESENTS WITNESS that in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the vendor by the purchaser (the

Recitals: of lease. Parcels: of mesne assignments; of agreement for sale. *Testatum.* Assignment of leaseholds.

(*y*) Where the assignment is by the original lessee it can be endorsed on or made supplemental to the lease. See the following precedent.

(*z*) Stamp, *ad valorem*.

(*a*) If the lessor's consent is required, it may be given by making him a party to the assignment (as in the next precedent), or it may be given by a separate instrument, which is the more usual practice. The clause in the lease requiring the lessor's consent to assignment should be recited as follows:—

"And in the indenture now in recital was contained a covenant against assignment of the premises therein comprised, or any part thereof [during the last —— years of the said term] without the licence in writing of the said [*lessor*], his executors, administrators, or assigns."

(*b*) If the licence to assign is given by a separate instrument, recite here:—

"AND WHEREAS the said [*lessor*] has given his licence in writing to the assignment hereby intended to be made by an instrument, dated, &c."

VII. ASSIGNMENT OF LEASEHOLDS.

receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, assigns unto the purchaser, ALL and singular the premises comprised in or expressed to be demised by the said indenture of lease (*c*), TO HOLD unto the purchaser for all the residue now unexpired of the said term of —— years, SUBJECT nevertheless to the payment of the rent reserved by and the performance and observance of the covenants on the lessee's part, and conditions contained in the said indenture of lease (*d*).

Parcels.

Habendum.

Subject to payment of rent and performance of covenants, &c.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

VIII. ASSIGNMENT *of* LEASEHOLDS *by the* ORIGINAL LESSEE, *by* DEED INDORSED *on the* LEASE, *where the* LESSOR CONCURS *to give* CONSENT *to the* ASSIGNMENT. VARIATIONS *in* NOTES *where the* ASSIGNMENT *is by* SUPPLEMENTAL DEED.

Parties.

THIS ASSIGNMENT (*e*) is made the —— day of ——, 19—, BETWEEN the within named [*vendor*] (hereinafter called "the vendor"), of the first part; the within named [*lessor*] (hereinafter called "the lessor"), of the second part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part (*f*):

(*c*) If the description of the property has changed since the date of the lease, add here:—"which now are known as, &c."

(*d*) A covenant by the purchaser to pay the rent and perform the lessee's covenants and indemnify the vendor is implied under the L. P. A. 1925, s. 77 (1) (c).

(*e*) Stamp, *ad valorem*.

Variations.

(*f*) If, instead of indorsing the assignment of the lease, it is made by a separate instrument and treated as supplemental to the lease (see L. P. A. 1925, s. 58), the parties will be described as in an ordinary deed, and after the names of the parties the following words may be added:—

"AND is to be read as supplemental to an indenture of lease (hereinafter referred to as 'the principal indenture'), dated, &c."

Or, if the deed is intended to be actually annexed to the lease, the reference thereto may be to "the above written indenture."

VIII. ASSIGNMENT OF LEASEHOLDS BY INDORSEMENT, &C.

Recitals.

WHEREAS the vendor has agreed to sell to the purchaser the premises comprised in the within written (*g*) indenture for the sum of £——:

AND WHEREAS the lessor has consented to join in these presents for the purpose and in manner hereinafter appearing:

Testatum. Assignment.

NOW THESE PRESENTS WITNESS that in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the vendor to the purchaser (the receipt whereof is hereby acknowledged), the vendor, with the licence and consent (*h*) of the lessor hereby testified, hereby, as beneficial owner, assigns unto the purchaser, ALL and singular the premises comprised in, or expressed to be demised by the within written (*g*) indenture of lease (*i*), To HOLD the same unto the purchaser for all the residue now unexpired of the within mentioned term of —— years (*k*), subject to the payment of the rent reserved by and the performance and observance of the covenants on the lessee's part, and conditions contained in the within written (*g*) indenture (*l*).

Habendum.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

(*g*) *Or,* "principal."

(*h*) The licence will "extend only to the permission actually given": see L. P. A. 1925, s. 143.

(*i*) If the description of the property has changed since the lease, add here:—

"which now are known as," &c.

(*k*) *Or,* "the term of —— years mentioned in the principal indenture."

(*l*) As to the implied covenant by the purchaser to pay rent, &c., see note (*d*) to Precedent VII.

IX. ASSIGNMENT OF LEASE AND FIXTURES SUBJECT TO UNDERLEASE BY INDORSEMENT.

IX. ASSIGNMENT *of* LEASE *of a* MESSUAGE *and certain* SCHEDULED FIXTURES (*n*), *&c.*, SUBJECT *to* UNDERLEASE *of* PART *of the* PREMISES, *in* CONSIDERATION *of the* ASSIGNEE *taking upon himself the* RENT *and* COVENANTS, *by* INDORSEMENT.

Parties. THIS ASSIGNMENT, made the —— day of ——, 19—, BETWEEN the within named [*assignor*], of the one part, and

Testatum. [*assignee*], of, &c., of the other part, WITNESSETH, that in

Assignment. consideration of the covenants on the part of the said [*assignee*] hereinafter contained, the said [*assignor*] hereby, as beneficial owner (*o*), assigns unto the said [*assignee*] ALL and singular the messuage or tenement and premises demised by the within written lease, with their appurtenances, and also ALL THOSE the household goods, tenant's fixtures, chattels, and effects particularly mentioned in the schedule hereto.

Habendum as to messuage. TO HOLD the said messuage or tenement, with the appurtenances, unto the said [*assignee*], for all the remainder now unexpired of the term of years granted by the within written lease; SUBJECT nevertheless to the payment of the rent and performance of the covenants respectively by and in the same lease reserved and contained and on the lessee's part hence-

Subject to an underlease. forth to be paid and performed; AND subject also to and with the benefit of a certain underlease of [*set out the parcels under-*

As to the transfer of personal chattels. (*n*) A deed of assignment is not necessary to confer a title to personal chattels. Sect. 58 of the Stamp Act, 1891, only allows apportionment of the consideration for stamp duty where the property is conveyed in separate parcels by different instruments, the fixtures and other personal chattels should therefore be excluded from the assignment where a large pecuniary consideration is paid for them, so as to avoid the extra *ad*

Stamp. *valorem* stamp duty. On a purchase under the authority of a special Act, *ad valorem* duty for the whole consideration must be paid: see Finance Act, 1895, s. 12; *Eastbourne Corporation* v. *A.-G.*, [1904] A. C. 155. In the present case the assignment of the lease without the fixtures, &c. would bear a stamp of 10*s.* if the lease was at a rack rent; but if the lease has a pecuniary value, the stamp would be *ad valorem* as on a voluntary conveyance; and in that case, or if the fixtures are added, the stamp should be adjudicated.

(*o*) The insertion of the words " as beneficial owner " seems advisable, even if the lease is at a rack rent. The covenants by the assignee would be sufficient to make the assignment a conveyance for " valuable consideration " within the meaning of sect. 76 (1) (A) and (B) of the L. P. A. 1925: see *Currie* v. *Misa*, L. R. 10 Ex. at p. 153.

leased], being part of the said messuage or tenement and premises, granted by the said [*assignor*] to [*underlessee*], of, &c., by an indenture, dated the —— day of —— now last past, for the term of seven years from the —— day of —— then instant, at the yearly rent of £——. AND TO HOLD the said goods, tenant's fixtures, chattels, and effects, unto the said [*assignee*] absolutely, subject nevertheless to the right and interest of the said [*underlessee*] in such of the said goods, tenant's fixtures, chattels, and effects as are mentioned in a schedule to the said underlease of the —— day of —— last, AND the said [*assignee*] hereby covenants with the said [*assignor*] (*p*) that the [*assignee*] will pay from time to time the rent reserved by the within written lease, and will perform and observe from time to time the covenants on the part of the lessee and the conditions contained in the within written lease, and at all times hereafter will keep the said [*assignor*] indemnified from all actions, proceedings, costs, damages, expenses, claims, and demands for or in respect of the non-payment of the said rent or any part thereof, or the breach, non-performance, or non-observance of the said covenants and conditions, or any of them.

IX. ASSIGNMENT OF LEASE AND FIXTURES SUBJECT TO UNDERLEASE BY INDORSEMENT.

Habendum as to fixtures.

Covenants by assignee to pay rent, &c.

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

X. ASSIGNMENT *of* PART *of the* PREMISES *comprised in a* LEASE (*the* REMAINDER *being* RETAINED *by the* VENDOR). ACKNOWLEDGMENT *of* RIGHT *to* PRODUCTION *and* UNDERTAKING *for* SAFE CUSTODY *of* LEASE; COVENANT *by* PURCHASER NOT *to* ERECT BUILDINGS (*q*).

THIS ASSIGNMENT (*r*) is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), Parties.

(*p*) It is considered that sect. 77 (1) (c) of the L. P. A. 1925, does not apply where the covenants by the assignee are the only consideration.

(*q*) It is advisable in all cases when the lease is not handed over to obtain an attested copy.

(*r*) Stamp, *ad valorem* on purchase price. The statement as to value, if appropriate, should be added at the end of the deed: see *ante*, p. 360.

X. ASSIGNMENT OF PART OF THE PREMISES COMPRISED IN A LEASE.

of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS [*recite lease*, ut ante, *p.* 367]: AND WHEREAS the purchaser has contracted with the vendor for the purchase of the premises hereinafter described being part of the premises comprised in the hereinbefore recited lease, for the residue of the said term, at the price of £——; AND upon the treaty for the said purchase it was agreed that the purchaser should pay the yearly rent of £——, in respect of the premises hereinafter described, as his proportion of the whole yearly rent of £——, and that the residue of the whole yearly rent of £—— should be paid by the vendor in respect of the premises not hereby assigned, and that the said parties respectively should enter into the several covenants and agreements hereinafter contained.

Recitals: of lease; of contract for purchase; of agreement to apportion rent.

Testatum. NOW THESE PRESENTS WITNESS as follows:—

1. In pursuance of the said agreement, and in consideration of the sum of £—— now paid by the purchaser to the vendor (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, assigns unto the purchaser, ALL [*set out parcels*], being part of the premises comprised in and demised by the hereinbefore recited lease, which same premises hereby assigned are now in the occupation of the purchaser (*s*); TOGETHER with all the benefit and advantage of the said indenture of lease, and of the lessor's covenants therein contained, so far as the same relate to or concern the premises hereby assigned (*t*). TO HOLD all the premises hereby assigned unto the purchaser henceforth, during all the remainder now unexpired of the said term of —— years, subject, nevertheless, to and exclusively charged with the payment of the said yearly rent of £—— to the said [*lessor*], or his representatives or assigns, on or at the days and times and in the manner on, at, and in which the whole rent reserved by the said

Assignment. Parcels.

Habendum.

Subject to proportion of rents and covenants.

Reference to underlease.

(*s*) If an underlease has been granted by the vendor, it should be noticed here, thus:—

"in the occupation of [*underlessee*] under the underlease of the same premises hereinafter mentioned."

If so mentioned, it will be excepted out of the implied covenant against incumbrances.

(*t*) If there has been an underlease, add—

"and the benefit of the underlease hereinafter mentioned."

indenture of lease is made payable in exoneration of the premises not hereby assigned (which last-mentioned premises are to be charged exclusively with the remainder of the said whole rent in exoneration of the premises hereby assigned): AND ALSO subject to the covenants and conditions contained in the said indenture of lease, so far as relates to the premises hereby assigned with their appurtenances; [AND subject also to a certain indenture of underlease, dated, &c., and made, &c., whereby a part of the premises were demised by the vendor to [*underlessee*] for the term of —— years, from the —— day of ——, 19—, at the yearly rent of £——] (*u*).

Covenants by vendor and purchaser as to apportioned rent, &c.

2. It is hereby agreed and declared that the premises hereby assigned shall stand charged in favour of the vendor with the payment of all money which may become payable by the purchaser, and that the part of the premises comprised in the said lease, which is not hereby assigned and remains vested in the vendor, shall stand charged in favour of the purchaser with the payment of all money which may become payable by the vendor under the covenants implied in these presents by reason of subsection one of section seventy-seven of the Law of Property Act, 1925.

Acknowledgment and undertaking as to lease.

3. The vendor hereby acknowledges the right of the purchaser to production of the said indenture of lease, and delivery of copies thereof, and he hereby undertakes for the safe custody thereof.

Not to erect buildings so as to obstruct the light of the assignor's dwelling-house.

4. The purchaser hereby covenants with the vendor, not at any time hereafter, during the residue of the said term of —— years, to make, erect, or set up buildings, wall, partitions, or other erections on the premises hereby assigned, so as to obstruct or diminish the light or air of the premises not hereby assigned, as the same light and air are now enjoyed by the occupiers thereof, or so as to raise the height or widen the ground plan of the premises hereby assigned, or any part thereof.

[*Add statement as to value if appropriate, see* ante, *p.* 360].

IN WITNESS, &c.

(*u*) Cross covenants by vendor and purchaser to pay rent, &c. are implied under sect. 77 (1) (D) of the L. P. A. 1925. As to powers of distress and entry, see sect. 189 (3) (4).

XI. OF FREEHOLDS AND LEASEHOLDS.

XI. CONVEYANCE *by an* ABSOLUTE OWNER *to a* PURCHASER *of* FREEHOLDS *and* LEASEHOLDS. VARIATION *where* PART *of the* FREEHOLDS (*formerly* COPYHOLD) *is* SUBJECT *to a* COMPENSATION RENTCHARGE.

Parties.

THIS CONVEYANCE (*y*) is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part:

Recitals: of vendor's title; to freeholds;

WHEREAS the vendor is seised of, or entitled to the several messuages, lands, and hereditaments described in the first [*and second parts of the first*] schedule hereto in fee simple in possession;

of lands formerly copyhold;

[AND WHEREAS the messuages, lands, and hereditaments described in the second part of the first schedule hereto formerly were copyhold of the Manor of ——]:

of compensation agreement;

[AND WHEREAS by a compensation agreement dated the —— day of ——, and made between, &c., it was agreed that the compensation for the extinguishment of manorial rights, and of the rights of the lord of the manor to mines and minerals, and of the sporting and other rights of the lord of the manor in regard to the messuages, lands, and hereditaments described in the second part of the first schedule hereto, should be the principal sum of £——, with interest thereon at the rate of £—— per cent. per annum, the said principal sum to be paid by —— equal instalments payable on the —— day of ——, and on each subsequent —— day of ——, till the said principal sum should be satisfied, and the interest on unpaid principal money to be paid with the instalments of principal money, and that so long as any of the said instalments and interest should remain unpaid, a terminable and variable rentcharge accruing from day to day, but payable at the same times as the instalments, should issue out of the messuages,

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(*y*) Presumably the consideration will be more than 500*l*., in which case the stamp duty will be 10*s*. for every 50*l*. or part of 50*l*. of the purchase-money.

If, however, the statement as to value is appropriate, it should be added at the end of the form: see *ante*, p. 360.

As regards the leaseholds, a covenant by the purchaser to pay rent, &c. is implied under sect. 77 (1) (c) of the L. P. A. 1925.

lands, and hereditaments described in the second part of the first schedule hereto of an amount equal to the said instalments and interest from time to time payable, and so as to secure the same]:

to leaseholds;

AND WHEREAS the vendor is also possessed of, or entitled to the several messuages and lands described in the second schedule hereto, for the residues of the several terms therein respectively created by the several leases, which, and the mesne assignments whereof respectively are also mentioned in such last mentioned schedule, and are therein set opposite to the properties to which such leases and assignments relate respectively, and at the yearly rents therein mentioned respectively:

of agreement for sale.

AND WHEREAS the vendor has agreed with the purchaser for the sale to him of all the said messuages, lands, and hereditaments, at the price of £——: NOW THESE PRESENTS WITNESS as follows:—

Grant of freeholds. Parcels.

1. In pursuance of the said agreement, and in consideration of the sum of £——, now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the purchaser, ALL the messuages or dwelling-houses, lands, and hereditaments situate in the parishes of —— and ——, in the county of ——, and particularly described in the first [and second parts of the first] schedule hereto, and delineated in the map or plan drawn on the —— skin of these presents, and therein coloured ——, but so that in case there shall be any variance or discrepancy between the said plan and the verbal description hereinbefore, or in the said first schedule hereto contained, such verbal description shall prevail, and shall not be governed, restricted, or enlarged by the said plan: TO HOLD the same unto the purchaser in fee simple [subject as to that part thereof which is described in the second part of the first schedule hereto to the terminable and variable rentcharge created by the hereinbefore recited compensation agreement].

Habendum.

Second *testatum.* Assignment of leaseholds.

2. In further pursuance of the said agreement and for the consideration aforesaid, the vendor hereby, as beneficial owner, assigns unto the purchaser, ALL THOSE the several messuages and pieces or parcels of land situate in the parishes of —— and —— aforesaid, particularly described in the second schedule hereto and delineated, with the abuttals thereof, in the said map or plan, and therein coloured ——, TO HOLD all the premises hereby assigned

XI. OF FREEHOLDS AND LEASEHOLDS.

unto the purchaser for the residues of the several terms therein respectively created by the several indentures of lease, which in the said second schedule hereto are respectively set opposite to the properties to which the same respectively relate, subject to the several rents and covenants on the part of the lessees, and to the conditions reserved by and contained in the said leases respectively.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

XII. SURRENDER *of a* LEASE *by way of* SALE *to the* REVERSIONER *in* FEE. (*By* INDORSEMENT *on the* LEASE.)

Parties.

THIS SURRENDER (*z*) is made the —— day of ——, 19–, BETWEEN the within named [*lessee*], of the one part, and [*reversioner*], of, &c., of the other part:

Recitals: of conveyance of freehold reversion;

WHEREAS (*a*) by an indenture, dated, &c., and made between the within named [*lessor*], of the one part, and the said [*reversioner*], of the other part, for the consideration therein mentioned, the premises demised by the within written indenture were (with other hereditaments) conveyed and assured to the said [*reversioner*], in fee simple, subject, nevertheless, as to the premises demised by the within written indenture, to the term of —— years thereby created:

of agreement for purchase of lessee's interest.

AND WHEREAS the said [*reversioner*] has agreed with the said [*lessee*] for the purchase of the estate and interest of the said [*lessee*], of and in the said premises, for the residue of the said term, to the intent that the same term may merge and be extinguished in manner hereinafter appearing, for the price of

---

(*z*) Stamp, *ad valorem*.

(*a*) If preferred, say,

"Whereas the said [*reversioner*] is seised in fee simple of the premises demised by the within written indenture, subject to the term of years granted by the within written indenture."

XII. SURRENDER OF LEASE TO REVERSIONER.

Testatum.

£——: NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the said [*lessee*] by the said [*reversioner*] (the receipt whereof is hereby acknowledged), the said [*lessee*] hereby, as beneficial owner, surrenders and assigns unto the said [*reversioner*], ALL and singular the messuage, hereditaments, and premises comprised in and demised by the within written indenture, to the intent that the said term of —— years created by the within written indenture may merge and be extinguished.

Second *testatum.*

Release of lessor's covenants (*b*).

[AND THESE PRESENTS FURTHER WITNESS, that in further pursuance of the said agreement, and for the consideration aforesaid, the said [*lessee*] hereby releases and discharges the said [*reversioner*] from the several covenants, for, &c. [*specify any particular covenants*], and from all other covenants and conditions contained in the within written indenture, and on the part of the lessor to be performed or observed, and from all actions, claims and demands, for or in respect of the said covenants and conditions, or any of them, or for or in respect of any provision, matter, or thing, contained or mentioned in the within written indenture.] [And the said [*reversioner*] hereby releases and discharges the said [*lessee*] from all actions, claims, and demands for or in respect of any past breach of the covenants and conditions contained in the within written indenture, and on the part of the lessee to be performed or observed.]

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

(*b*) The second *testatum* will be used where there are covenants on the part of the lessor for renewal of the lease or otherwise, besides the usual covenant for quiet enjoyment or any *past* breaches of the lessee's covenants. All rent up to the surrender will be recoverable on the covenant to pay rent: see Apportionment Act, 1870 (33 & 34 Vict. c. 35); and *A.-G.* v. *Cox*, 3 H. L. C. 240; *Swansea Bank* v. *Thomas*, 4 Ex. D. 94; *Re South Kensington Co-operative Stores*, 17 Ch. D. 161; followed in *Bish. of Rochester* v. *Le Fanu*, [1906] 2 Ch. 513.

XIII. BY PERSONS BENEFICIALLY ENTITLED OF FREEHOLDS FORMERLY HELD IN UNDIVIDED SHARES.

XIII. CONVEYANCE *of* FREEHOLDS *to one* PURCHASER *by* VENDORS *who, when the Law of Property Act,* 1925, *came into operation, were* SEISED BENEFICIALLY *as* TENANTS *in* COMMON *free from* INCUMBRANCES *affecting* UNDIVIDED SHARES (*a*).

THIS CONVEYANCE (*b*), dated the —— day of ——, 19—, is

Parties. made BETWEEN [*vendor*], of ——, and [*vendor*], of —— (hereinafter called "the vendors"), of the one part; and [*purchaser*], of —— (hereinafter called "the purchaser"), of the other part:

Recitals; of ownership as tenants in common prior to 1926; WHEREAS on the 1st day of January, 1926, the entirety of the hereditaments hereinafter described was vested absolutely and beneficially in the vendors (*c*) in fee simple in undivided shares free from any incumbrances affecting the undivided shares.

of agreement for sale. AND WHEREAS the vendors have agreed to sell the said hereditaments to the purchaser at the price of £——.

NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— paid to the vendors by the purchaser (the receipt of which the vendors hereby acknowledge), the vendors, as trustees (*d*), hereby grant to the purchaser, ALL [*set out parcels*], TO HOLD unto the purchaser in fee simple.

[*Add acknowledgment of purchaser's right to production of documents if required, see* ante, *p.* 361.]

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

(*a*) See Part IV. 1 (2) of the first schedule to the L. P. A. 1925. This form is not appropriate where on January 1st, 1926, there were more than four tenants in common, or where any of the undivided shares were vested in trustees or were incumbered before the day, but settlements or incumbrances of undivided shares made on or after that day are immaterial.

(*b*) Stamp, *ad valorem*.

(*c*) If one of the tenants in common has died on or after the 1st of January, 1926, say,

"in the vendors and ——, now deceased,"

and add a recital of the death of the deceased tenant in common.

(*d*) The implied covenant for title can be extended if desired under sect. 76 (7) of the L. P. A. 1925, but should not be extended where any tenant in common has died or has sold or incumbered his beneficial interest since the 31st of December, 1925.

XIV. CONVEYANCE *of* FREEHOLDS *by* PUBLIC TRUSTEE *acting as* TRUSTEE *for* TENANTS *in* COMMON (*e*).

XIV. BY PUBLIC TRUSTEE OF FREEHOLDS FORMERLY HELD IN UNDIVIDED SHARES.

THIS CONVEYANCE, dated the —— day of ——, is made BETWEEN the Public Trustee, of the one part, and [*purchaser*], of —— (hereinafter called "the purchaser"), of the other part.

WHEREAS (*f*) Joshua Smith, formerly of ——, deceased, by his will dated the —— day of ——, appointed [A. B. and C. D.] executors thereof, and devised all his real estate to such of his children as should attain the age of twenty-one years as tenants in common in equal shares. Recitals: of will of testator;

AND WHEREAS the said testator died on the —— day of ——, and his said will was proved in the Principal Probate Registry on the —— day of —— by the said [A. B. and C. D.]. of death and probate;

AND WHEREAS the testator left four children only him surviving, namely, Peter Smith, Robert Smith, Samuel Smith, and Thomas Smith, all of whom attained the age of twenty-one years. of issue;

AND WHEREAS the said testator was seised at his death of the of seisin subject to lease;

(*e*) Where at the date of the L. P. A. 1925, land is held by tenants in common, and (a) there are more than four tenants in common, or (b) some of the undivided shares are settled or incumbered, then in either case the land vests in the Public Trustee on trust for sale, but he is not entitled to act unless requested so to do by persons interested in more than one undivided half of the land. See Part IV. of the first schedule to the L. P. A. 1925. The testator is assumed, of course, to have died prior to the 1st January, 1926.

(*f*) If preferred, the detailed recitals in this draft can be omitted, and the following general recitals substituted:—

"Whereas on the 1st of January, 1926, the hereditaments hereinafter described were vested in [more than four] persons of full age entitled thereto in undivided shares [and some of those persons were not entitled beneficially] [and some of the undivided shares were subject to incumbrances]; AND WHEREAS persons interested in more than one undivided half of the said hereditaments requested the Public Trustee to act in the statutory trusts subsisting under the Law of Property Act, 1925, and the Public Trustee accepted the trust and agreed to act accordingly."

It is thought, however, that as a rule a purchaser will prefer to set out fully the circumstances under which the property became vested in the Public Trustee.

XIV. BY PUBLIC TRUSTEE OF FREEHOLDS FORMERLY HELD IN UNDIVIDED SHARES.

hereditaments hereinafter described for an estate in fee simple subject to a lease dated the —— day of ——, and made between, &c., whereby the said hereditaments were demised to the said [*lessee*] for the term of —— years from the —— day of —— at the rent of £——.

of assent;

AND WHEREAS the said [A. B. and C. D.] assented to the devise of real estate contained in the said will by writing under their hands dated the —— day of ——.

of settlement by one of children;

AND WHEREAS by a settlement (*g*) dated the —— day of ——, and made between, &c. [*being a settlement executed on the marriage of the said Robert Smith*], the said Robert Smith conveyed all his undivided share of the hereditaments hereinafter described unto and to the use of the trustees therein named upon the trusts therein declared.

of request to Public Trustee;

AND WHEREAS the said Peter Smith, Samuel Smith, and Thomas Smith (*h*) have requested the Public Trustee by writing under their hands to act in the statutory trusts subsisting under the Law of Property Act, 1925, and the Public Trustee has agreed to accept the trust and to act accordingly.

of agreement for sale.

AND WHEREAS the Public Trustee, pursuant to the said statutory trusts, has agreed to sell the hereditaments hereinafter described to the purchaser at the price of £——.

NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— paid to the Public Trustee by the purchaser (the receipt of which the Public Trustee hereby acknowledges), the Public Trustee, as

Habendum.

trustee, grants to the purchaser, ALL [*set out parcels*], TO HOLD unto the purchaser in fee simple (subject to the said lease of the —— day of ——).

[*Add acknowledgment of right to production of deeds if required, see* ante, *p.* 361.]

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

(*g*) If undivided shares are incumbered and not settled, substitute for the recital of the settlement a recital of the incumbrance. For form of recital, see next precedent.

(*h*) It is sufficient if persons interested in more than one undivided half of the land request the Public Trustee to act, and the consent of incumbrancers of undivided shares is not necessary.

XV. CONVEYANCE *of* FREEHOLDS *to one* PURCHASER *by* TRUSTEES *appointed by* TENANTS *in* COMMON *to act in the* STATUTORY TRUSTS *in the place of the* PUBLIC TRUSTEE (*i*).

XV. BY TRUSTEES APPOINTED IN THE PLACE OF THE PUBLIC TRUSTEE OF FREEHOLDS FORMERLY HELD IN UNDIVIDED SHARES.

THIS CONVEYANCE, dated the —— day of ——, 19—, is made BETWEEN [*vendor*], of ——, and [*vendor*], of —— (hereinafter called "the trustees"), of the one part, and [*purchaser*], of —— (hereinafter called "the purchaser"), of the other part.

WHEREAS by a conveyance dated the —— day of ——, and made between [*parties*], the hereditaments hereinafter described were conveyed unto and to the use of Peter Smith, Robert Smith, Samuel Smith, and Thomas Smith in fee simple as tenants in common in equal shares (*j*).

Recitals: of conveyance to tenants in common;

AND WHEREAS by a mortgage dated the —— day of ——, and made between the said Peter Smith, of the one part, and [*mortgagee*], of the other part, the said Peter Smith conveyed his undivided share of the said hereditaments unto and to the use of the said [*mortgagee*] in fee simple by way of mortgage for securing the principal sum of £—— and interest, and the said principal sum is still due and owing.

of mortgage of undivided share;

AND WHEREAS by a charge dated the —— day of ——, and made between the said Robert Smith, of the one part, and [*chargee*], of the other part, the said Robert Smith charged his undivided share of the said hereditaments with the payment to the said [*chargee*] of the principal sum of £——, together with interest for the same, and the said principal sum still is due and owing.

of charge of another undivided share by way of legal charge;

AND WHEREAS by an appointment dated the —— day of ——, and made, &c., the said Peter Smith, the said Robert Smith, and the said Samuel Smith, with the consent (*k*) of the incumbrancers

of appointment of trustees for purposes of L. P. A., 1925;

(*i*) See Part IV. 1 (4) (iii) of the first schedule to the L. P. A. 1925.

(*j*) If there is a legal mortgage affecting the entirety, and the property is sold subject to the same, it must be recited, and the grant to the purchaser must be expressed to be subject to "the said mortgage of the day of and to the legal term of years absolute now subsisting thereunder for securing the principal moneys and interest due thereunder."

(*k*) The purchaser is not concerned to see that this consent actually was given, but it seems better to recite the fact.

XV. BY TRUSTEES APPOINTED IN THE PLACE OF THE PUBLIC TRUSTEE OF FREEHOLDS FORMERLY HELD IN UNDIVIDED SHARES.

of the undivided shares of the said Peter Smith and the said Robert Smith, appointed the trustees to be trustees in the place of the Public Trustee of the hereditaments comprised in the hereinbefore recited conveyance of the —— day of ——, for the purposes of the statutory trusts subsisting with regard to the said hereditaments under the Law of Property Act, 1925, and declared that the hereditaments comprised in the said indenture of conveyance of the —— day of —— should vest in the trustees in fee simple upon the statutory trusts free from incumbrances affecting undivided shares, and free from incumbrances (if any) affecting the entirety not secured by a term of years absolute (*l*).

of agreement for sale;

AND WHEREAS in pursuance of the said statutory trusts the trustees, with the consent aforesaid, have agreed to sell the hereditaments hereinafter described to the purchaser at the price of £——.

NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— paid to the trustees by the purchaser (the receipt of which the trustees hereby acknowledge), the trustees, as trustees, hereby

Habendum. grant to the purchaser, ALL [*set out parcels*], TO HOLD unto the purchaser in fee simple.

[*Add acknowledgment as to title deeds, if appropriate, see* ante, *p.* 361.]

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

(*l*) If preferred, detailed recitals can be omitted, and the following short recital substituted:—

"Whereas under and by virtue of the Law of Property Act, 1925, and a deed of appointment of trustees executed pursuant to the said Act dated the —— day of ——, and made between, &c., the hereditaments hereinafter described are vested in the vendors in fee simple free from incumbrances [*or*, "subject to the said mortgage, &c. as in note (*b*)"] upon the statutory trusts mentioned in the thirty-fifth section of the Law of Property Act, 1925."

It will be better, however, not to adopt this course unless the deed of appointment contains full recitals.

XVI. CONVEYANCE *by* PARTNERS *of* FREEHOLDS *conveyed to the* FIRM *as* PARTNERSHIP PROPERTY *before January 1st*, 1926.

XVI. OF FREEHOLDS BELONGING TO A PARTNERSHIP FIRM.

THIS CONVEYANCE (*m*) is made the —— day of ——, 19—, BETWEEN [*surviving partner*], of, &c., and [*other surviving partner*], of, &c., of the one part (*n*); and [*purchaser*], of the other part.

Parties.

WHEREAS the said [*surviving partners*] and [*deceased partner*] carried on the business of merchants at ——, in the county of ——, in copartnership on the terms that the said [*surviving partners*] should be entitled to two third parts of the assets of the said business, and the said [*deceased partner*] should be entitled to the remaining third part of such assets.

Recitals: of partnership;

AND WHEREAS the said [*partners*] purchased for purposes of their said business the hereditaments hereby conveyed, and by an indenture dated, &c., and made between [*parties*], the said hereditaments were granted or assured to the use of [*partners*], their heirs and assigns, as joint tenants in trust for the said [*partners*], their executors, administrators, and assigns, as part of their partnership estate and property.

of purchase of lands for partnership purposes;

(*m*) Stamp, *ad volorem*.

(*n*) The question, who are the proper conveying parties on a sale of partnership property, will depend on the form of the original conveyance on the purchase thereof by the firm. In the present case it is assumed that before the commencement of the L. P. A. 1925, the property was conveyed to all the partners in fee, in trust for the partners, as part of the partnership estate. In that case surviving partners can sell without the concurrence of the representatives of a deceased partner, either under the statutory trusts subsisting under the L. P. A. 1925 (see the first schedule to that Act, Part IV. (1), or in pursuance of their duty to realise the partnership assets: *Re Bourne*, [1906] 2 Ch. 427. The conveyance to the firm not having been on trust for sale, and not having been a settlement, it is considered that if the conveyance was dated before 1926, a sole surviving partner could give a good receipt for the purchase-money under sect. 14 of the T. A. 1925.

Conveyances of land by partners.

If the property is in a compulsory district the form of conveyance will depend on whether or not the partners have been registered as proprietors. If so registered, the proprietors can (subject to cautions and restrictions) convey by simple registered transfer.

Registered land.

XVI. OF FREEHOLDS BELONGING TO A PARTNERSHIP FIRM.

AND WHEREAS the said [*deceased partner*] died on the —— day of ——, 19—.

AND WHEREAS the said [*surviving partners*] have agreed with the said [*purchaser*] for the sale to him of the said hereditaments at the price of £——.

of death of partner; of agreement for sale.

Testatum.

NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the said [*surviving partners*] by the said [*purchaser*] (the receipt whereof is hereby acknowledged), the said [*surviving partners*] as beneficial owners grant unto the said [*purchaser*], ALL THAT [*describe parcels*], TO HOLD all the premises unto the said [*purchaser*] in fee simple.

[*Add statement of value if appropriate*, ante, *p.* 360.]

IN WITNESS, &c.

XVII. CONVEYANCE *of* FREEHOLDS *to* PARTNERS *as* JOINT TENANTS (*o*).

Parties.

THIS CONVEYANCE (*p*) is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*partner*], of, &c. [*second partner*], of, &c., and [*third partner*], of, &c., carrying on the business of —— at ——, in the county of ——, in partnership under the style or firm of [A. & Co.] (hereinafter called "the purchasers"), of the other part, WITNESSETH that, in consideration of the sum of £—— now paid to the [*vendor*] by the purchasers (the receipt whereof is hereby acknowledged), the [*vendor*] hereby as beneficial owner grants unto the purchasers, ALL, &c. [*describe parcels*], TO HOLD all the premises unto the purchasers, in fee simple, as joint tenants, upon the statutory trusts referred to in sect. 35 of the Law of Property Act, 1925, for the benefit of the purchasers, as part of their copartnership estate: PROVIDED ALWAYS, and it is hereby agreed and declared, that it shall be lawful for

Testatum.

Conveyances of land to partners.

(*o*) The form of conveyance given in this precedent is adapted from that formerly employed on a purchase of land for partnership purposes. There must be a trust for sale: S. L. A. 1925, s. 36 (4).

(*p*) Stamp, *ad valorem*.

the purchasers, or in case any one or more of them shall have ceased to be a partner or partners in the said firm, then for the surviving or continuing partners or partner at any time or times to appoint a new trustee or new trustees of these presents, and in particular to appoint a new trustee in the place of any trustee who shall have ceased to be a member of the said firm as if such trustee were dead. And, further (*q*) [that a statement contained in any instrument purporting to be an appointment of a new trustee or new trustees hereof, that any person or persons has or have ceased to be a partner or partners in the said firm, shall in favour of a purchaser for value of the premises hereby conveyed, or any of them, be conclusive evidence of the fact stated, and in favour of such purchaser any conveyance, the validity of which depends on the truth of the statement, shall be binding on all partners in the said firm, who shall be bound to give effect thereto.

Power to appoint new trustees, and power to trustees to sell, &c.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

XVIII. CONVEYANCE *of* FREEHOLDS *by* TRUSTEES *under a* TRUST *for* SALE *contained in a* WILL *to a* PURCHASER *in* FEE SIMPLE: *the* WIDOW *consents to the* SALE. ACKNOWLEDGMENT *by the* TRUSTEES *of the* RIGHT *of the* PURCHASER *to the* PRODUCTION *of* DEEDS (*r*).

THIS CONVEYANCE (*s*) is made the —— day of ——, 19—, BETWEEN [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter

Parties.

(*q*) The proviso in square brackets, though not commonly inserted, may be useful in cases where there are likely to be frequent changes in the firm.

(*r*) By sect. 23 of the L. P. A. 1925, a trust for sale of land whether express or implied is for the protection of a purchaser to be deemed to be subsisting until the land has been conveyed to or under the direction of the persons interested in the proceeds of sale. Until the appointment of new trustees the personal representatives of a sole or last surviving or continuing trustee can exercise any power or trust given to such trustee (see sect. 18 of T. A. 1925), but it is not absolutely clear that

How long a trust for sale subsists.

Power of sale in representatives of surviving trustee.

(*s*) Stamp, *ad valorem*.

XVIII. BY TRUSTEES UNDER TRUST FOR SALE IN A WILL.

called "the vendors"), of the first part; [*widow*], of, &c., of the second part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part: WHEREAS [*testator*], late of, &c., by his will, dated, &c., after certain legacies and specific devises (which did not include the hereditaments hereby conveyed), devised all the rest and remainder of his real estate unto the vendors, upon trust that they should, with the consent in writing of his wife the said [*widow*], during her life and widowhood, sell the same real estate as therein mentioned; AND the said testator thereby appointed the vendors to be the executors of his said will: AND WHEREAS the said testator died on the —— day of ——, 19—, being at the time of his death seised of the said hereditaments hereby conveyed in fee simple, and his said will was on the —— day of ——, 19—, proved by the vendors in the Principal [—— District] Probate Registry of the High Court of Justice (*rr*):

Recitals: of will devising lands on trust for sale;

AND WHEREAS the vendors, with the consent of the said [*widow*], and in execution of the trust for sale contained in the said will, have agreed with the purchaser for the sale to him of the said hereditaments in fee simple in possession, free from incumbrances, at the price of £——:

of agreement for sale;

AND WHEREAS the several deeds and writings specified in the second schedule hereto relate as well to other hereditaments as to the hereditaments hereby conveyed, and upon the treaty for the said sale, it was agreed that the vendors should give such acknowledgment in respect thereof as hereinafter appears.

of agreement as to deeds retained.

Testatum. NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the vendors by the purchaser (the receipt whereof is hereby acknowledged), the vendors, with the consent of the said [*widow*], testified by her executing these presents, hereby as trustees grant, and as the personal representatives of the said testator, release and confirm unto the purchaser, ALL THAT

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personal representatives (even if more than one) of a sole or last surviving trustee could give a receipt for capital money, and a sole personal representative of such trustee, not being a trust corporation, certainly could not do so.

(*rr*) In this precedent the trustees are assumed to be executors also. Where they are not executors, a recital of the assent by the executors to the residuary devise should be inserted, and they should not be expressed to release and conform as personal representatives.

[*describe parcels*], To HOLD unto the purchaser in fee simple; AND the vendors hereby acknowledge the right of the purchaser to the production of the several deeds and writing specified in the schedule hereto, and to delivery of copies thereof. XVIII. BY TRUSTEES UNDER TRUST FOR SALE IN A WILL.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

XIX. CONVEYANCE *on a* PURCHASE *by* TRUSTEES *under a* POWER *in a* MARRIAGE SETTLEMENT, *with the* CONSENT *of the* PARTIES BENEFICIALLY INTERESTED.

THIS CONVEYANCE (*t*) is made the —— day of ——, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the first part; [*husband*], of, &c., and [*wife*], his wife, of the second part; and [*trustees*], of, &c. (hereinafter called "the purchasers"), of the third part. Parties.

WHEREAS the vendor is seised for an estate in fee simple in possession, free from incumbrances, of the hereditaments hereby assured: AND WHEREAS, by an indenture, dated, &c., and made between [*parties*] (being the settlement made on the marriage of the said [*husband*] and [*wife*], his wife), it was declared (amongst other things) that it should be lawful for the trustees of the said settlement to invest any part not exceeding £—— of the [*husband's* or *wife's*] trust funds comprised in the said settlement in the purchase of freehold hereditaments in England or Wales to be conveyed to the trustees of the said settlement in fee simple upon trust to sell the same, and in the meantime, and until sale, upon the trusts and subject to the powers and provisions in the said settlement expressed; AND WHEREAS the purchasers are the present trustees of the said indenture of settlement, and in pursuance of the said power therein contained as aforesaid, they have, with the consent of the said [*husband*] and [*wife*], agreed with the vendor for the purchase of the unincumbered fee simple of the hereditaments hereinafter conveyed at the price of £——; NOW Recital of settlement, containing the power to purchase. Contract for purchase.

(*t*) Stamp, *ad valorem*.

XIX. ON PURCHASE BY TRUSTEES UNDER A POWER.

Testatum.

Vendor, in consideration of purchase-money, releases to purchasers.

Habendum.

To uses of settlement.

THESE PRESENTS WITNESS that, for effectuating the said sale, and in consideration of the sum of £—— paid by the purchasers out of the trust funds aforesaid, with the consent of the said [*husband*] and [*wife*], his wife, testified by their severally executing these presents (the receipt whereof is hereby acknowledged), the vendor, as beneficial owner, hereby grants unto the purchasers [*describe parcels*]; To HOLD the same unto the purchasers, upon the trusts, and subject to the powers and provisions upon and subject to which the same ought to be held under the said settlement.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

XX. CONVEYANCE *of* FREEHOLDS *on* SALE *by* TENANT *for* LIFE *under the Settled Land Act*, 1925, *the* PURCHASE-MONEY *being* PAID *to the* TRUSTEES *of the* SETTLEMENT. VARIATIONS *where the* PURCHASE-MONEY *is* PAID *into* COURT, *and where the* SALE *includes the* PRINCIPAL MANSION HOUSE, *and the* CONSENT *of the* TRUSTEES *or an* ORDER *of the* COURT *is necessary to the* SALE (*u*).

Parties.

THIS CONVEYANCE (*x*) is made the —— day of ——, 19—, BETWEEN [*tenant for life*], of, &c. (hereinafter called "the vendor"), of the first part; [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the second part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part: WHEREAS by a vesting deed dated the —— day of ——, and made between ——, it was declared that the hereditaments hereby conveyed [*together with other hereditaments*] were vested in the vendor in fee simple upon the trusts, and subject to the powers and provisions upon and subject to which under the settlement in the said vesting deed recited, or otherwise, the same ought to be held from time to time, and by [*endorsements on*] the said vesting deed the trustees are stated to be the trustees of the settlement for

Recital: of vesting deed.

(*u*) As to the mansion house, see S. L. A. 1925, s. 65.

(*x*) Stamp, *ad valorem*.

the purposes of the Settled Land Act, 1925 (*y*) (*z*): AND WHEREAS the vendor has agreed with the purchaser for the sale to him in fee simple in possession, free from incumbrances, of the said hereditaments hereby conveyed, at the price of £—— (*a*): AND WHEREAS [*recite agreement for acknowledgment and undertaking as to deeds*, ante, *Precedent II.*, *p.* 361]. NOW THESE PRESENTS WITNESS as follows:—

of agreement for sale.

Testatum.

1. In pursuance of the said agreement, and in consideration (*b*)

(*y*) As to indorsements on the vesting deed, see S. L. A. 1925, s. 35; and see also note (*c*) on p. 298, *infra*.

(*z*) If the sale is of a principal mansion house and is made with the consent of the trustees, then after the recital of the agreement by the vendor to sell add the recital following:—

"AND WHEREAS the said [*trustees*] have agreed to testify their consent to such sale in manner hereinafter appearing."

If the sale be made with the sanction of the Court, the trustees will not be necessary parties unless they are to receive the purchase-money. The following recitals will be inserted:—

Sale with sanction of Court.

"AND WHEREAS, by an order of the Chancery Division of the High Court of Justice, dated the —— day of ——, 19—, and made by Mr. Justice X. In the matter of the —— estate, &c. [*set out the full title of the matter*], on the application of the vendor, the tenant for life under the said settlement, it was ordered that the vendor, or his successors, be at liberty to sell the principal mansion house and the lands usually held therewith (being the said lands and hereditaments hereby conveyed)."

If the sale is made pursuant to a contract conditional upon the order of the Court being obtained, the recital in the text relating to the contract will be varied accordingly.

(*a*) The tenant for life has the option, under sect. 75 of the S. L. A. 1925, to direct whether the purchase-money shall be paid into Court or to the trustees. If he chooses to direct payment into Court, the trustees will not be parties to the conveyance. The following recital will be here inserted:—

Payment of purchase-money into Court.

"AND WHEREAS, in pursuance of an order of the Chancery Division of the High Court of Justice, dated, &c., and made by Mr. Justice X.: In the matter, &c., the sum of £——, being the amount of the said purchase-money, after deducting therefrom the costs of paying in the same, was paid by the purchaser into Court to the credit of, &c."

(*b*) If the purchase-money be paid into Court, the consideration will be stated as follows:—

"In consideration of the said sum of £—— so paid into Court

XX. OF FREEHOLDS BY TENANT FOR LIFE UNDER SETTLED LAND ACT, 1925.

of the sum of £—— paid by the purchaser by the direction of the vendor to the trustees as such trustees as aforesaid (*c*) (the receipt and payment whereof in manner aforesaid the trustees and the vendor respectively hereby acknowledge), the vendor, in exercise of the power in this behalf given to him by the Settled Land Act, 1925, and of every or any other power enabling him,

Parcels.

doth hereby grant unto the purchaser, ALL [*set out parcels*], TO HOLD the same unto the purchaser in fee simple.

Covenant for title (*d*).

2. The vendor hereby covenants with the purchaser that the vendor has not executed, or done, or knowingly suffered, or been party or privy to any deed or thing whereby the hereditaments hereby conveyed, or any part thereof, are or is, or may be, impeached, charged, affected, or incumbered in title, estate, or otherwise, or by means whereof the vendor is hindered in anywise from conveying the said hereditaments, or any part thereof, in the manner in which the said hereditaments are expressed to be hereby conveyed (*e*).

Acknowledgment, &c. as to deeds.

3. The vendor hereby acknowledges the right of the purchaser to the production of the several deeds and documents specified in the second schedule hereto, and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

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as aforesaid (the payment whereof, in manner aforesaid, the vendor doth hereby acknowledge)."

(*c*) If the purchase-money is paid to the trustees there must be two at least to receive it unless the sole trustee is the Public Trustee or some other trust corporation: see S. L. A. 1925, s. 94.

(*d*) In the case of a sale of a principal mansion house, &c., add (as the case may require)—

Sale of mansion house, &c.

"With the consent of the trustees testified by their respectively executing these presents,"

or,

"By the order and with the sanction of the Court, testified by the hereinbefore recited order of, &c."

(*e*) It is considered that in future a tenant for life should covenant for title as a trustee only. The covenant for title is inserted in full in order to avoid calling the tenant for life a trustee. As to the form of the covenant, see L. P. A. 1925, second schedule, Part VI.

XXI. CONVEYANCE *of* FREEHOLDS *by* TENANT *for* LIFE *for* BUILDING PURPOSES *where the* WHOLE *or* PART *of the* CONSIDERATION *consists of a* RENTCHARGE (*f*).

XXI. OF FREEHOLDS BY TENANT FOR LIFE FOR BUILDING.

THIS CONVEYANCE (*g*) is made the —— day of ——, BETWEEN [*tenant for life*], of, &c. (hereinafter called "the vendor"), of the first part; [*trustee*], of, &c., and [*trustee*] (*h*), of, &c. (hereinafter called "the trustees"), of the second part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part: WHEREAS by a principal vesting deed dated the —— day of ——, and made between [*parties*], it was declared that the hereditaments hereinafter described, together with other hereditaments, were vested in the vendor in fee simple upon the trusts and subject to the powers and provisions upon and subject to which, under the settlement recited in the principal vesting deed, or otherwise, the same ought to be held from time to time, and by [*endorsements on*] the principal vesting deed the trustees are stated to be trustees of the settlement for the purposes of the Settled Land Act, 1925: AND WHEREAS the vendor, in exercise of his statutory power under the Settled Land Act, 1925, has agreed to sell to the purchaser the hereditaments hereinafter described in consideration of [the sum of £—— to be paid forthwith and of (*i*)] the perpetual yearly rentcharge of £—— hereinafter reserved, and of the covenants on the part of the purchaser hereinafter contained; NOW THESE PRESENTS WITNESS as follows:—

Parties.

Recitals: of principal vesting deed.

of agreement for sale.

Testatum.

1. In pursuance of the said agreement, and in consideration

(*f*) A tenant for life can sell in consideration wholly or partly of a rentcharge: see S. L. A. 1925, s. 39, sub-ss. (2), (3) and (4). The vendor should stipulate expressly by the contract that the purchaser shall bear the cost of the conveyance, otherwise a question might arise, for the vendor, as well as the purchaser, takes a benefit under the conveyance.

(*g*) Stamp, *ad valorem:* on the purchase-money now paid and (under sect. 56 (2) of the Stamp Act, 1891) on the total amount payable in respect of the rentcharge during the period of twenty years next after the date of the deed.

(*h*) Even if there is no present purchase-money to be paid to the trustees, they must be parties to declare that the rentcharge is vested in the tenant for life.

(*i*) Omit the words in square brackets where the rentcharge is the sole consideration.

XXI. OF FREEHOLDS BY TENANT FOR LIFE FOR BUILDING.

of [the sum of £—— now paid to the trustees by the purchaser by the direction of the vendor (the receipt of which the trustees hereby acknowledge), and of (*i*)] the rentcharge hereinafter reserved, and of the covenants on the part of the purchaser hereinafter contained, the vendor hereby, as trustee (*j*), grants to the purchaser, ALL [*parcels*], TO HOLD unto the purchaser in fee simple, reserving, nevertheless, out of the hereditaments hereby conveyed (*k*) unto the vendor in fee simple a perpetual yearly rentcharge of £——, to commence from the date of these presents, and to be charged upon and issuing out of the said hereditaments for ever, and to be paid by equal half-yearly payments, without any deduction, on the —— day of ——, and the —— day of —— in every year.

Grant. *Habendum.* Reservation of rentcharge.

2. The purchaser hereby covenants with the vendor to pay henceforward the said rentcharge hereby reserved, without deduction, by the instalments, and on the days by and on which the same hereinbefore is made payable.

Covenant for payment of rentcharge.

3. The purchaser hereby covenants with the vendor that the purchaser will, within —— years from the date of these presents, erect on the hereditaments hereby conveyed, with proper materials and in a workmanlike manner, not less than —— good and substantial messuages or dwelling-houses, to be completed and finished within the period aforesaid, and will lay out in the erection and completion of each such messuage or dwelling-house not less than the sum of £——, and will, if required, produce to the vendor, or his successors, proper vouchers or receipts for all such expenditure, and will at all times keep in good repair the said messuages or dwelling-houses.

Covenant to erect messuages.

4. The purchaser hereby covenants with the vendor to the

Restrictive covenants (*l*).

(*i*) Omit the words in square brackets where the rentcharge is the sole consideration.

(*j*) The form of covenant in Precedent XX. can be used if preferred.

(*k*) As to the reservation of rentcharges, see L. P. A. 1925, s. 65. The rentcharge will be a "legal estate" for the purposes of the Act: see sect. 1 (2) and (4). As to remedies for enforcing payment of rentcharges, see L. P. A. 1925, s. 121. The rentcharge does not require registration as a land charge.

(*l*) The restrictive covenants should be registered as a land charge at the Land Registry or (if the land is in Yorkshire) in the Yorkshire Registry: see sect. 10 (1), Class D. (ii), of L. C. A. 1925, and L. P. A. 1925, s. 198.

intent that the burden of this covenant shall run with the hereditaments hereby conveyed into whosoever hands the same shall come for the benefit of the adjoining property of the vendor [*describe the adjoining property of the vendor by reference to a plan or otherwise*], to observe and perform at all times henceforward the stipulations and restrictions set out in the first schedule to these presents.

Provision for re-entry.

5. It is hereby declared that these presents are upon the express condition that if at any time the rentcharge hereby reserved, or any part thereof, shall be in arrear and unpaid for twenty-one days after the same shall have become due (whether the same shall have been demanded or not) [*or*, if there shall be any breach or non-observance of the covenant as to building within the said period of —— years hereinbefore contained], then and in every such case it shall be lawful for the vendor or other the person or persons entitled to receive the said rentcharge, without prejudice to the powers given by sect. 121 of the Law of Property Act, 1925, to re-enter upon the hereditaments subject to the said rentcharge, or any part thereof, and that this power of re-entry shall be annexed to the said rentcharge.

Declaration that the rentcharge is vested in the vendor.

6. It is declared hereby that the rentcharge hereby reserved is vested in the vendor in fee simple and is subject to the settlement which immediately before the execution of these presents was subsisting with regard to the hereditaments out of which the said rentcharge hereby is reserved, being the settlement recited in the hereinbefore recited vesting deed (*m*).

Declaration as to principal vesting deed.

7. It is declared hereby that the hereinbefore recited vesting deed is the last or only principal vesting deed affecting the said land.

Acknowledgment for production.

8. The vendor hereby acknowledges the right of the purchaser to the production and to delivery of copies of the documents specified in the [*second*] schedule hereto.

In witness, &c. (*mm*).

The First Schedule above referred to.

The Second Schedule above referred to.

(*m*) See S. L. A. 1925, s. 10 (3).

(*mm*) The restrictive covenants require registration as a land charge.

XXII. BY TENANT FOR LIFE OF FREEHOLDS (FORMERLY COPYHOLD).

XXII. CONVEYANCE *by* TENANT *for* LIFE *of* FREEHOLDS (*formerly* COPYHOLD, *but enfranchised by the Law of Property Act*, 1922) *where the* MANORIAL INCIDENTS *have been* EXTINGUISHED *under a* COMPENSATION AGREEMENT, *but the* MINERAL *and* SPORTING RIGHTS *of the* LORD *of the* MANOR *are still* SUBSISTING. VARIATION *in* RATES *where* MANORIAL INCIDENTS *as well as* MINERAL *and* SPORTING RIGHTS *of the* LORD *of the* MANOR *are still* SUBSISTING (*n*).

THIS CONVEYANCE (*o*) is made the —— day of ——, 19—,

Parties. BETWEEN [*tenant for life*], of, &c. (hereinafter called "the vendor"), of the first part; [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the second part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part.

Recitals: WHEREAS the hereditaments hereinafter described formerly were copyhold of the manor of ——, and comprised in the settlement mentioned in the vesting deed next hereinafter recited.

of vesting deed. AND WHEREAS by a vesting deed (*p*) dated the —— day of ——, and made between [*parties*], it was declared that (amongst other hereditaments) the hereditaments hereinafter described were vested in the vendor in fee simple upon the trusts subject to the powers and provisions upon and subject to which, under the settlement in the said vesting deed recited, or otherwise, the same ought to be held from time to time, and by [*endorsements on*] (*q*) the said vesting deed the trustees are stated to be the trustees of the settlement for the purposes of the Settled Land Act, 1925.

(*n*) As to manorial incidents, &c., see notes to Forms III. and IV.

If the mineral and sporting rights are extinguished as well as manorial incidents, then the land can be sold as ordinary freehold, and Form XX. can be used.

(*o*) Stamp, *ad valorem*.

(*p*) Under the L. P. A. 1922, the fee simple in the enfranchised copyhold land vests in the tenant for life, but under sect. 13 of the S. L. A. 1925, a vesting deed has to be executed, notwithstanding, before the tenant for life can sell.

(*q*) As to indorsements on the vesting deed, see sect. 35 of S. L. A. 1925.

AND WHEREAS by a compensation agreement (*r*) dated, &c., and made, &c., it was agreed that the compensation for the extinguishment of the manorial incidents saved by Part V. of the Law of Property Act, 1925, in respect of (amongst other hereditaments) the hereditaments hereinafter described should be the sum of £——, and that sum was paid forthwith to the person or persons entitled to receive the same by the trustees of the said settlement (*s*). *of compensation agreement.*

AND WHEREAS the vendor has agreed with the purchaser for the sale to him in fee simple in possession of the hereditaments hereinafter described, subject to the rights of the lord of the said manor in the mines and minerals therein and thereunder, and the sporting and other rights affecting the same preserved by the 12th schedule to the Law of Property Act, 1922, but otherwise free from incumbrances, at the price of £——. *of agreement for sale.*

NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— paid by the purchaser by the direction of the vendor to the trustees as such trustees as aforesaid (*t*) (the receipt and payment whereof in manner aforesaid the trustees and the vendor hereby respectively acknowledge), the vendor, in exercise of the power in this behalf given to him by the Settled Land Act, 1925, and of all other powers (if any) him hereto enabling, hereby grants (*u*) unto the purchaser, ALL [*set out parcels*], TO HOLD unto the purchaser in fee simple, subject to the rights in respect of mines and minerals and the sporting and other rights preserved to the lord of the said manor by the 12th schedule to the Law of Property Act, 1922. *Testatum.* *Habendum.*

(*r*) If there has been no compensation agreement this recital will be omitted, and the property will be conveyed, subject to manorial incidents, as in Form III. at p. 362.

(*s*) Where the enfranchised copyholds are settled the compensation has to be paid in a gross sum if there is capital money out of which it can be paid unless the Court otherwise directs: see L. P. A. 1922, s. 139 (v). Where the compensation is paid by instalments the conveyance will be subject to the compensation rentcharge as in Form IV.

(*t*) There must be two trustees at least to receive the purchase-money unless the sale trustee is a trust corporation.

(*u*) As to covenants for title, see note (*e*) on p. 390.

XXII. BY TENANT FOR LIFE OF FREEHOLDS (FORMERLY COPYHOLD).

Covenant for title.

And the vendor hereby covenants with the purchaser that the vendor has not executed, or done, or knowingly suffered, or been party or privy to any deed or thing whereby the hereditaments hereby conveyed, or any part thereof, are, or is, or may be, impeached, charged, affected, or incumbered in title, estate, or otherwise, or by means whereof the vendor is hindered in anywise from conveying the said hereditaments, or any part thereof, in the manner in which the said hereditaments are expressed to be hereby conveyed.

Acknowledgement for production.

And the vendor hereby acknowledges the right of the purchaser to the production and to delivery of copies of the documents mentioned in the schedule hereto, and hereby undertakes for the safe custody thereof.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

XXIII. ASSIGNMENT *of* LEASEHOLDS *on* SALE *by the* TENANT *for* LIFE *under the Settled Land Act*, 1925, *the* PURCHASE-MONEY *being* PAID *to the* TRUSTEES *of the* SETTLEMENT (*x*).

THIS ASSIGNMENT (*y*) is made the —— day of ——, BETWEEN [*tenant for life*], of, &c. (hereinafter called "the vendor"), of the first part; [*trustee*], of, &c., and [*trustee*], of, &c. (*z*) (hereinafter called "the trustees"), of the second part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part.

Recitals: of lease;

WHEREAS by a lease dated, &c., and made, &c., ALL [*set out the description of the premises from the lease*] were demised unto the said [*original lessee*] for the term of —— years from the ——

(*x*) For variation where the purchase-money is paid into Court, see Precedent XX.

(*y*) Stamp, *ad valorem*.

(*z*) There must be at least two trustees to receive the purchase-money, unless the sole trustee is a trust corporation.

day of —— subject to the yearly rent of £—— reserved by and to the covenants on the part of the lessee and the conditions contained in the said lease.

And whereas [after divers mesne assignments and acts in the law ultimately] by a vesting deed dated, &c., and made, &c., it was declared (among other things) that the said demised premises were vested in the vendor for the residue of the said term of years, and that the vendor should stand possessed thereof upon the trusts and subject to the powers and provisions upon and subject to which, under the settlement in the said vesting deed recited, the same ought to be held from time to time, and by [*endorsements on*] (*a*) the same vesting deed it is stated that the trustees are the trustees of the said settlement for the purposes of the Settled Land Act, 1925. Recital of vesting deed.

And whereas the vendor has agreed to sell the said premises to the purchaser for the sum of £——. Agreement for sale.

NOW THESE PRESENTS WITNESS as follows:—

1. In pursuance of the said agreement, and in consideration of the sum of £—— paid to the trustees by the purchaser by direction of the vendor (the receipt of which the trustees and the payment of which the vendor hereby respectively acknowledge), the vendor, in exercise of the power conferred on him by the Settled Land Act, 1925, and of all other powers (if any) him hereto enabling, hereby assigns (*b*) to the purchaser, All and singular the premises demised by the said lease [which are now known as ——], To hold unto the purchaser for all the residue now unexpired of the said term of —— years granted by the said lease, subject to the payment of the rent reserved by and to the performance and observance of the covenants on the part of the lessee and the conditions contained in the said lease [and subject also to, but with the benefit of, an underlease dated, &c., and made, &c., whereby the said premises were sub-demised to the said —— for the term of —— years from the —— day of —— at the rent of £——]. Assignment. *Habendum.*

2. The vendor hereby covenants with the purchaser that the vendor has not executed, or done, or suffered, or been party or privy Covenants against incumbrances.

(*a*) As to indorsements on the vesting deed, see sect. 35 of L. P. A. 1925.

(*b*) As to covenants for title, see note (*e*) on p. 390.

XXIII. ASSIGNMENT OF LEASEHOLDS ON SALE BY TENANT FOR LIFE.

to any deed or thing whereby the premises hereby assigned, or any part thereof, are, or is, or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or by means whereof the vendor is hindered in anywise from assigning the same, or any part thereof, in the manner in which the same are expressed to be assigned.

As to production of deeds.

3. The vendor hereby acknowledges the right of the purchaser to the production and to the delivery of copies of the said vesting deed, and hereby undertakes for the safe custody thereof (*c*).

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

XXIV. CONVEYANCE *by* LEGAL PERSONAL REPRESENTATIVES *of* FREEHOLDS *to which an* INFANT *is* BENEFICIALLY ENTITLED *in* POSSESSION *in* FEE SIMPLE, *or of or over which he would (if of full age) be* TENANT *for* LIFE *or have the* POWERS *of a* TENANT *for* LIFE (*d*).

THIS CONVEYANCE (*e*) is made the —— day of ——, 19—,

Parties.

BETWEEN [*vendor*], of, &c., and [*vendor*], of, &c. (hereinafter called "the vendors"), of the one part (*f*), and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part:

Recital of will (*g*).

WHEREAS [*testator*], late of, &c., deceased, by his will, dated, &c., appointed

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(*c*) It is not clear that if there have been appointments of new trustees of the settlement the purchaser is entitled to rely on the memorandum, which must be indorsed on the vesting deed under sect. 35 (2) of the T. A. 1925, and sect. 35 (1) of the S. L. A. 1925. In that case the declaration deed, provided for by sect. 35 of the S. L. A., should be abstracted and produced, and included in the acknowledgment for production.

(*d*) As to the sale of the lands of an infant, see Preliminary Note, "Infants," *ante*, p. 346, and S. L. A. 1925, s. 26.

(*e*) Stamp, *ad valorem*.

(*f*) In the present form it is assumed that there are two personal representatives, but a single personal representative could sell and convey.

(*g*) If the infant is entitled on an intestacy substitute the following recitals for the first five recitals in the text:—

Recital of seisin.

"WHEREAS [*intestate*], formerly of ——, died on the —— day of —— intestate, leaving one child only, namely [*infant*], and no

the vendors executors thereof, and thereby ordered that all his debts should be paid: AND, subject thereto, the said [*testator*] gave, devised, and bequeathed, all his real and personal estate, of what nature or kind soever and wheresoever, unto his son [*infant*] absolutely (*h*): AND WHEREAS the said [*testator*] died on the —— day of ——, 19—, seised of the lands and hereditaments hereby conveyed, in fee simple free from incumbrances, and the said will was proved in the Principal Probate Registry on the —— day of ——, 19—, by the vendors: AND WHEREAS the debts of the said [*testator*] have all been fully paid and satisfied: AND WHEREAS the said [*infant*] is an infant under the age of twenty-one years: AND WHEREAS [the vendors did not assent to the devise contained in the said will before the coming into operation of the Settled Land Act, 1925], and no principal vesting instrument has been executed [since the Act]: AND WHEREAS the vendors, in exercise of the powers vested in them by the twenty-sixth section of the Settled Land Act, 1925, have agreed with the purchaser for the sale to him of the hereditaments hereby assured in fee simple in possession, free from incumbrances, at the price of £——: NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— paid by the purchaser to the vendors (the receipt of which the vendors hereby

of death of testator, &c.;

of payment of debts, &c.

of no assent (*hh*).

of agreement for sale;

Testatum.

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other issue him surviving, and the said [*infant*] is an infant under the age of twenty-one years: AND WHEREAS letters of administration of the real and personal estate of the said [*intestate*] were granted to the vendors out of the Principal [—— District] Probate Registry on the —— day of ——: AND WHEREAS the said [*intestate*] at the time of his death was seised of the hereditaments hereinafter described in fee simple, free from incumbrances: AND WHEREAS the vendors have never executed any conveyance or any principal vesting instrument affecting the hereditaments hereinafter described."

(*h*) This form can be used with the necessary variation in the recital of the will where the land was devised to the infant for life only, or was devised to trustees in trust for the infant, provided that no principal vesting instrument has been executed. The purchaser will not be bound to see that the trustees have authorised the sale or that the purchase-money is paid to them.

(*hh*) Omit the words in square brackets where the testator died before 1926.

XXIV. OF LANDS OF AN INFANT.

acknowledge), the vendors, in exercise of the powers given to them by the twenty-sixth section of the Settled Land Act, 1925, and of every or any other power enabling them in this behalf, do hereby as trustees, grant unto the [*purchaser*] ALL and singular [*describe parcels*], TO HOLD the same unto the purchaser, in fee simple: AND the vendors hereby acknowledge the right of the purchaser to production of the documents specified in the schedule hereto, and to delivery of copies thereof.

Habendum.

Acknowledgment, &c.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

XXV. CONVEYANCE *by* TRUSTEES *as* STATUTORY OWNERS *under the Settled Land Act,* 1925, *of* FREEHOLDS (*i*) *to which an* INFANT *is* BENEFICIALLY ENTITLED *in* FEE SIMPLE, *or of or over which an* INFANT (*if of full age*) *would be* TENANT *for* LIFE *or would have the* POWERS *of a* TENANT *for* LIFE.

THIS CONVEYANCE (*k*) is made the —— day of ——, BETWEEN [*vendor*], of, &c., and [*vendor*], of, &c. (hereinafter called "the vendors"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS (*l*) under a settlement (*m*) dated the —— day of ——,

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(*i*) See sect. 26 and second schedule, Part III., of the S. L. A. 1925. This form can easily be adapted to an assignment of leaseholds if necessary. It can be used *mutatis mutandis* where the Public Trustee becomes the trustee of the settlement under the second schedule, Part III., of the S. L. A. 1925. It must be borne in mind, however, that under sect. 13 of the S. L. A. 1925, a principal vesting instrument has to be executed before the trustees of the settlement can sell as statutory owners, and that this applies to the Public Trustee if he becomes trustee of the settlement.

(*k*) Stamp, *ad valorem.*

(*l*) If the settlement or will under which the infant is entitled is dated or takes effect after 1925, omit the first recital, and commence with the recital of the vesting deed. In that case the purchaser is entitled to rely on the statements in the vesting deed.

(*m*) If the infant is entitled under a will, say,

"WHEREAS under a settlement made by the will dated the ——

and made between [*parties*], ——, of, &c., is beneficially entitled in fee simple in possession to [*or*, would, if of full age, be tenant for life of] [*or*, would, if of full age, have the powers of a tenant for life over] the hereditaments hereinafter described: AND WHEREAS the said [*infant*] is an infant under the age of twenty-one years (*n*): AND WHEREAS by a principal vesting instrument dated the —— day of ——, and made between [*parties*] (*o*), it is declared that (amongst other hereditaments) the said hereditaments hereinafter described are vested in the vendors in fee simple as statutory owners, and that the vendors shall stand possessed thereof upon the trusts and subject to the powers and provisions on which, under the settlement therein recited (being the settlement hereinbefore mentioned (*p*)) the same ought to be held from time to time, and that the vendors are the trustees of the said settlement for the purposes of the Settled Land Act, 1925: AND WHEREAS the vendors, in exercise of the powers given to them by the Settled Land Act, 1925, have agreed with the purchaser for the sale to him of the said hereditaments hereinafter described at the price of £——: NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— paid to the vendors by the purchaser (the receipt of which the vendors hereby acknowledge), the vendors, in exercise of the powers given to them as aforesaid and of all other powers (if any) them hereunto enabling, hereby as trustees, grant to the purchaser, ALL [*set out parcels*], TO HOLD unto the purchaser in fee simple.

[*Add acknowledgment of right to production of deeds, see* ante, *p.* 361.]

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

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day of ——, of [*testator*], which will was proved by [*executors*] on the —— day of ——."

(*n*) If the vendors were appointed trustees by an order of the Court under sect. 60 of the S. L. A. 1882, insert here a recital of the order appointing them. Even in that case a vesting deed will be necessary before they can sell.

(*o*) *Or*, "under the hands and seals of," *if the vesting deed is* ***not*** inter partes.

(*p*) Omit these words if the settlement is dated or (if by will) took effect after 1925.

XXVI. OF COPYHOLDS AND LEASEHOLDS TO TRUSTEES OF A SETTLEMENT UNDER THE SETTLED LAND ACT, 1925.

XXVI. CONVEYANCE *by way of* SUBSIDIARY VESTING DEED *of* FREEHOLDS *and* LEASEHOLDS *upon a* PURCHASE *with* CAPITAL MONEYS *arising under the Settled Land Act*, 1925 (*q*).

THIS SUBSIDIARY VESTING DEED (*r*) is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the first part; [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the second part; and [*tenant for life*], of, &c. (hereinafter called "the purchaser"), of the third part: WHEREAS the vendor is seised of the freehold hereditaments hereinafter conveyed in fee simple in possession free from incumbrances: AND WHEREAS by a lease dated, &c., and made, &c., ALL THAT, &c. [*describe parcels from lease*], was demised unto [*original lessee*] from the —— day of ——, for the term of —— years, at a yearly rent of £——, and subject to the covenants and conditions therein contained, and on the part of the lessee to be performed and observed: AND WHEREAS by divers mesne assignments or acts in the law, and ultimately by an indenture dated, &c., and made, &c., all the premises comprised in the hereinbefore recited indenture of lease have become vested in the vendor for the residue of the said term of —— years: AND WHEREAS by a principal vesting deed, dated, &c., and made, &c., certain hereditaments were vested in the purchaser upon the trusts of the settlement therein recited, and by [*endorsements on*] the said principal vesting deed the trustees are stated to be trustees of the settlement for the purposes of the Settled Land Act, 1925: AND WHEREAS the vendor has agreed to sell to the purchaser the said freehold hereditaments hereinafter conveyed, and also the leasehold premises comprised in the said lease at the price of £——: NOW THESE PRESENTS WITNESS as follows:—

Parties.

Recitals:

of title of vendor to copyholds;

of vendor's title to leaseholds;

of settlement;

of agreement for purchase.

1. In pursuance of the said agreement, and in consideration of

(*q*) Under sect. 73 (xi) of the S. L. A. 1925, capital moneys arising under the Act may be applied in purchase of land in fee simple, or of leasehold land held for sixty years or more unexpired at the time of purchase. Sect. 10 of the same Act contains directions as to how land so acquired shall be conveyed and brought into settlement.

(*r*) Stamp, *ad valorem*.

the sum of £—— paid by the trustees to the vendor by direction (*s*) of the purchaser (the receipt of which sum the vendor hereby acknowledges), the vendor, as beneficial owner, hereby grants to the purchaser, ALL [*set out freehold parcels*], TO HOLD unto the purchaser, in fee simple, upon and subject to the same trusts and powers as by the said principal vesting deed are declared by reference as aforesaid with respect to the hereditaments therein comprised.

2. In further pursuance of the said agreement, and for the consideration aforesaid, the vendor, as beneficial owner, hereby assigns to the purchaser all the premises demised by the hereinbefore recited lease, TO HOLD the same unto the purchaser for the residue of the said term of —— years granted by the said lease at the rent and subject to the covenants and conditions reserved and contained by and in the said lease, and to be paid, performed, and observed by the lessee henceforth, and upon and subject to the same trusts and powers as by the principal vesting deed are declared by reference as aforesaid with respect to the hereditaments therein comprised.

3. The trustees are the trustees of the settlement for the purposes of the Settled Land Act, 1925.

[4. The power of appointing a new trustee or new trustees of the settlement is vested in —— during his life.]

[*Acknowledgment and undertaking as to muniments in schedule if required,* ante, *p.* 361.]

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

SCHEDULE OF MUNIMENTS.

(*s*) Under sect. 75 of the S. L. A. 1925, the investment or other application of capital money by the trustees of the settlement is to be made according to the direction of the tenant for life.

XXVII. OF FREEHOLDS BY MORTGAGEE.

XXVII. CONVEYANCE *by* MORTGAGEE *of* FREEHOLDS *under the* STATUTORY POWER *of* SALE *or under an* EXPRESS POWER (*t*). (*In note, express* COVENANT *against* INCUMBRANCES *by* MORTGAGEE.)

Parties.

THIS CONVEYANCE (*u*) is made the —— day of ——, 19—, BETWEEN [*mortgagee*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part:

Recitals: of mortgage (*x*);

WHEREAS by an indenture (*y*) dated, &c., and made, &c., the hereditaments hereinafter conveyed (with other hereditaments) were assured to the use of the vendor, his heirs and assigns, subject to a proviso for redemption thereof, on payment of the sum of £——, with interest thereon at the rate of —— per cent. per annum, on the —— day of —— then next (*z*):

of contract for sale.

AND WHEREAS the vendor, in exercise of the power conferred on him by the said indenture of mortgage [the statute in that behalf] (*a*), has contracted for the sale to the purchaser of the fee simple in possession of the said hereditaments hereinafter conveyed at the price of £——.

Testatum.

NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in

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(*t*) This precedent will apply both to the case of a sale under Lord Cranworth's Act (23 & 24 Vict. c. 145) where the mortgage was executed prior to the end of 1881, and also to the case of a sale under the L. P. A. 1925, where the mortgage was executed since 1881.

(*u*) The stamp will be *ad valorem*.

(*x*) This deed may be made supplemental to the mortgage so as to avoid the recital of the mortgage.

(*y*) Where the mortgage was made after 1925 the recital will run:—"WHEREAS by a mortgage dated, &c., and made, &c., the hereditaments, &c., were demised by the said [*mortgagor*], who then was seised thereof in fee simple free from incumbrances to the vendor for the term of —— years subject to a proviso for redemption, &c."

If the mortgage took of the form of a charge by way of legal mortgage, then the charge will be recited.

(*z*) If the sale is not made under the statutory power, the power of sale in the mortgage will be recited.

(*a*) If the sale is under a power in the mortgage, the words "the statute in that behalf" will be omitted; and if the sale is under the statutory power the words "the said indenture of mortgage" will be omitted.

consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof is hereby acknowledged), the vendor, in exercise of the power aforesaid, hereby as mortgagee (*b*), grants unto the purchaser, ALL THAT, &c. [*describe parcels*], TO HOLD the same unto the purchaser, in fee simple, discharged from all principal moneys and interest secured by and from all right or equity of redemption, and all claims and demands under the said indenture of mortgage (*d*).

Conveyance (*c*). Parcels. *Habendum.*

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

(*b*) Mortgagees, as well as trustees, give no covenant for title, except that they have not incumbered. As to the covenant implied by the vendor conveying as "mortgagee," see L. P. A. 1925, second schedule, Part VI. If an express covenant should appear desirable, it will take the following form (to follow the habendum):—

"AND the vendor hereby covenants with the purchaser that he, the vendor, has not executed, or done, or knowingly suffered, or been party or privy to anything whereby, or by means whereof, the premises hereinbefore assured, or any part thereof, are, is, or may be impeached, charged, affected or incumbered, in title, estate, or otherwise, or whereby, or by means whereof, he is in anywise hindered from conveying the same premises, or any part thereof, in the manner in which the same are or is expressed to be conveyed."

Covenant against incumbrances.

(*c*) Sect. 88 of the L. P. A. 1925, provides that the mortgagee may convey the fee simple in the name of the estate owner in whom it is vested. This form of conveyance would involve the insertion of a recital showing who the estate owner is, and, as the provision for conveyances in the name of the estate owner is permissive only and not obligatory, it will be more convenient for the mortgagee to convey in his own name.

(*d*) As to the mortgagee's receipt being a valid discharge for the purchase-money, see L. P. A. 1925, s. 107.

XXVIII. OF LEASEHOLDS BY A MORTGAGEE UNDER STATUTORY POWER OF SALE.

XXVIII. ASSIGNMENT *of* LEASEHOLDS *by a* MORTGAGEE *under* STATUTORY POWER *of* SALE.

THIS ASSIGNMENT (*e*) is made the —— day of ——, BETWEEN [*mortgagee*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part.

Parties.

Recitals of lease.

WHEREAS, by an indenture of lease, dated, &c., and made between, &c., ALL THOSE messuages, &c. [*parcels*], were demised unto [*lessee*] for the term of —— years, at the yearly rent of £——, and subject to the covenants on the lessee's part and conditions therein contained.

Devolution of the lease;

AND WHEREAS, under or by virtue of divers mesne assignments and acts in the law, and ultimately by an indenture, dated, &c., and made between, &c., the premises comprised in the hereinbefore recited indenture of lease became vested in [*mortgagor*] for the unexpired residue of the said term.

of mortgage.

AND WHEREAS, by an indenture of mortgage, dated, &c., and made between the said [*mortgagor*], of the one part, and the vendor of the other part, the said [*mortgagor*] demised the premises comprised in the said indenture of lease unto the vendor for all the residue then unexpired of the said term of —— years, except the last day thereof, subject to a proviso for the redemption thereof, on payment of the sum of £——, with interest thereon, on a day now past.

Agreement for sale.

AND WHEREAS the vendor has agreed with the purchaser for the sale to him for the sum of £—— of the premises comprised in the hereinbefore recited lease.

Testatum. Assignment of term granted

NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the purchaser to the vendor (the receipt whereof is

(*e*) Stamp, *ad valorem*. This form can be used whether the mortgage was made before or on or after the 1st of January, 1926, and whether the mortgage was by demise or by assignment or by a charge by way of legal mortgage, but in the two latter cases the recital of the mortgage will require modification. Under Part VIII. of the first schedule to the L. P. A. 1925, a mortgage by assignment made prior to 1st January, 1926, becomes a mortgage by demise, and under sect. 86 of the Act all mortgages of leaseholds after 1925 must be made by demise, unless effected by a charge by deed expressed to be by way of legal mortgage.

hereby acknowledged), the vendor, as mortgagee, in exercise of the power conferred upon him by the said indenture of mortgage [the statute in that behalf] (*g*), and of every other power enabling him, doth hereby assign unto the purchaser, ALL and singular the hereditaments and premises comprised in and demised by the hereinbefore recited lease, TO HOLD unto the purchaser henceforth for all the residue now unexpired of the said term of —— years granted by the said lease, subject to the rent reserved by and the covenants on the part of the lessee and the conditions contained in the said lease, but discharged from all principal moneys and interest secured by and from all claims and demands under the said mortgage (*h*).

by the lease (*f*).

[*Add statement as to value if required, see* ante, *p.* 360.]

IN WITNESS, &c.

XXIX. CONVEYANCE *of* FREEHOLDS *by* TRANSFEREE *of a* MORTGAGE. (*By* SUPPLEMENTAL DEED.)

THIS CONVEYANCE (*i*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: AND supplemental to a mortgage, dated the —— day of ——, and made between [*mortgagor*], of the one part, and [*mortgagee*], of the other part, whereby the messuages, lands, and hereditaments hereinafter described and hereby conveyed were assured unto and to the use of the said [*mortgagee*], his heirs and assigns, by way of mortgage

Parties.

Supplemental to mortgage;

(*f*) Under sects. 89 and 104 of the L. P. A. 1925, the mortgagee can assign the whole term granted by the lease, whether the mortgage was made originally by demise or by assignment. The mortgagee should assign in his own name, though under sect. 89 he has power to assign the leasehold reversion in the name of the estate owner: see note (*c*) on p. 405, *ante*.

(*g*) See note (*a*) on p. 404, *ante*.

(*h*) Even if the mortgage was, prior to 1926, made by assignment, no covenant by the purchaser to pay rent, &c., and indemnify the vendor is required: see L. P. A. 1925, second schedule, Part IX.

(*i*) Stamp, *ad valorem*.

XXIX. BY TRANSFEREE OF MORTGAGE.

for securing payment to the said [*mortgagee*] on the —— day of ——, of the sum of £——, with interest; AND ALSO supplemental to a transfer to the vendor of the said mortgage, dated, &c., and made between the said [*mortgagee*], of the one part, and the vendor, of the other part, WITNESSETH that, in consideration of the sum of £——, paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor, in exercise of the power in that behalf conferred upon him by the said indenture of mortgage [the statute in that behalf] (*k*), and of every or any other power him thereunto enabling, hereby, as mortgagee, grants unto the purchaser, ALL THAT [*describe parcels*]: TO HOLD the same unto the purchaser, in fee simple, discharged from all principal moneys and interest secured by, and all right or equity of redemption, claims and demands, under the said mortgage.

and to transfer of mortgage; *Testatum.* Conveyance. Parcels. *Habendum.* Freed from mortgage.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

XXX. CONVEYANCE *of an* EQUITY *of* REDEMPTION (*l*) *of* FREEHOLDS *with* COVENANT *by the* PURCHASER *to* PAY *the* MORTGAGE DEBT *and* INDEMNIFY *the* VENDOR.

Parties.

THIS CONVEYANCE (*m*) (*n*), made, &c., BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part; and

(*k*) See *ante*, p. 404, note (*a*).

Precautions to be taken by the purchaser of an equity of redemption.

(*l*) The following precautions should be taken by the purchaser of an equity of redemption:—1st. To ascertain from the mortgagee the state of the account between him and the mortgagor. 2ndly. To obtain the mortgagee's assurance that he has received no notice of any other incumbrance prior to 1926, and to search against the vendor for land charges (which include puisne mortgages: see L. C. A. 1925, s. 10).

Stamp.

(*m*) Stamp, *ad valorem* on the amount of the purchase-money, *i.e.*, the amount paid to the vendor for the equity plus the mortgage debt (Stamp Act, 1891, s. 57). If the mortgagee joins in the conveyance to release the vendor from his covenants and to take fresh covenants from the purchaser for payment of principal and interest, then a further stamp of 6*d.* for every 100*l.* of the mortgage debt will be payable by reason of the covenant to pay the same (Stamp Act, 1891, Sched. I.), but not exceeding 10*s.* See Revenue Act, 1903, s. 7.

(*n*) This form can be used whether the mortgage was made before 1926 or was made after 1925, but in the latter case the recital of the mortgage will require alteration.

[*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS by a mortgage dated the —— day of ——, 19—, and made between the vendor, of the one part; and [*mortgagee*], of, &c., of the other part; in consideration of the sum of £—— to the vendor paid by the said [*mortgagee*], the vendor covenanted with the said [*mortgagee*] to pay to him on the —— day of ——, 19—, the sum of £—— with interest thereon in the meantime at the rate of —— per cent. per annum, and also so long after that date as any principal money should remain due thereunder, to pay to him interest thereon at the rate aforesaid by equal half-yearly payments on the —— day of —— and the —— day of —— in every year; AND by the same mortgage the vendor granted the hereditaments hereby assured, unto and to the use of the said [*mortgagee*], his heirs and assigns, subject to a proviso for redemption of the said hereditaments upon payment of the sum of £—— and interest, on the —— day of —— then next ensuing; AND WHEREAS the said principal sum of £—— still remains owing upon the aforesaid security, but all interest in respect thereof has been duly paid up to the —— day of —— last past (*o*); AND WHEREAS the purchaser has contracted with the vendor for the purchase of the said hereditaments in fee simple, subject, nevertheless, to the said principal sum of £—— and interest secured by the said indenture of mortgage, at the price of £——, which several sums of

Recital of mortgage.

Money due.

Contract for purchase subject to mortgage.

3rdly. To give to the mortgagee notice of the purchase. As regards the first two precautions, although the mortgagee is not bound to give the information, yet his refusal would of course excite suspicion. As to the importance of giving notice to the mortgagee having the legal estate as a protection to the purchaser against consolidation, see *Vint* v. *Padgett*, 2 De G. & J. 611; *Pledge* v. *White*, [1896] A. C. 187. It will also be prudent to ascertain that the mortgagee has no mortgage on any other estate of the mortgagor; and that the mortgagor has not made any mortgage of any other estate to any other person, as the mortgagee of the estate purchased may acquire the charge on such other estate and consolidate. Sect. 93 of the L. P. A. 1925, which restricts the right of consolidation, applies "only if and so far as a contrary intention is not expressed in the mortgage deeds or one of them, and only applies where the mortgages or one of them are or is made after the 1st January, 1882. Where sect. 93 does not apply the equitable rule as to consolidation remains.

(*o*) The purchaser will, of course, ascertain this fact.

XXX. OF EQUITY OF REDEMPTION IN FEE.

£—— and £—— make together the sum of £—— (*o*). NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), and in consideration of the covenant hereinafter contained on the part of the purchaser, the vendor, as beneficial owner, hereby grants unto the purchaser, ALL THAT, &c. [*describe parcels*], TO HOLD the same, subject to the hereinbefore recited mortgage, and to the payment of the said principal sum of £——, and the interest now and hereafter to become due in respect thereof, unto the purchaser in fee simple. AND in consideration of the premises the purchaser hereby covenants with the vendor, that the purchaser will pay the principal sum of £—— secured by the said indenture of mortgage, and all interest now due or which hereafter shall accrue due in respect thereof, to the person or persons entitled to receive the same; AND will, at all times hereafter, effectually indemnify the vendor against the said principal sum of £——, and all interest thereon, and against all actions, proceedings, claims, and demands for or by reason of the non-payment thereof (*p*).

Testatum.

Consideration.

Grant.

Parcels.

Habendum.

Purchaser covenants:

to pay the mortgage-money;

and to indemnify vendor therefrom.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

(*o*) This is the sum on which the *ad valorem* duty must be paid if the interest has been paid up to date; but if there are arrears of interest, then, in calculating the stamp duty, such arrears should be taken into account as forming part of the consideration.

Purchaser of equity of redemption bound to pay mortgage debt.

(*p*) Though it should seem that a vendor is entitled to a covenant of this nature, yet, independently of express contract, the purchaser of an equity of redemption would be bound to indemnify the vendor against the mortgage debt: *Waring* v. *Ward,* 7 Ves. 332; *Adair* v. *Carden,* L. R. 29 Ir. 469; *Bridgeman* v. *Daw,* 40 W. R. 253; but in the case of a reversionary interest this obligation is conditional upon the interest vesting in possession: *Mills* v. *United Counties Bank,* [1912] 1 Ch. 231. Sometimes the indemnity is taken by a separate deed, as the conveyance goes into the custody of the purchaser.

The legal estate in fee simple is in the mortgagor and passes by this conveyance; the purchaser will require to be registered as proprietor if the land is in a "compulsory district."

XXXI. RELEASE *by* MORTGAGOR *to* MORTGAGEE *of the* EQUITY *of* REDEMPTION *of* FREEHOLDS INDORSED *on the* MORTGAGE DEED.

XXXI. RELEASE OF EQUITY OF REDEMPTION INDORSED.

THIS CONVEYANCE (*q*) is made the —— day of ——, 19—, BETWEEN the within named [*mortgagor*], of the one part; and the within named [*mortgagee*], of the other part: WHEREAS the within mentioned principal sum of £—— and an arrear of interest amounting to the sum of £——, now remain due and owing from the said [*mortgagor*] to the said [*mortgagee*] upon the within mentioned security: AND WHEREAS the said [*mortgagor*], in consideration of the sum of £—— so due for principal and interest as aforesaid, and of the payment by the said [*mortgagee*] to the said [*mortgagor*] of the sum of £——, which several sums of £—— and £—— together make the sum of £——, has agreed to release to the said [*mortgagee*] the equity of redemption in the within mentioned hereditaments: NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the said sum of £—— now paid by the said [*mortgagee*] to the said [*mortgagor*] (the receipt whereof is hereby acknowledged), and of the release hereinafter contained by the said [*mortgagee*] to the said [*mortgagor*] of the principal sum of £——, and of the said sum of £—— interest moneys so owing as aforesaid, the said [*mortgagor*] hereby, as beneficial owner, grants and releases unto the said [*mortgagee*], ALL and singular the messuages, lands, and hereditaments within mentioned, TO HOLD the same unto the said [*mortgagee*] in fee simple, discharged of and from all right or equity of redemption under the within written indenture: AND in consideration of the premises, the said [*mortgagee*] hereby releases the said [*mortgagor*] from the said principal sum of £——, and all interest secured by the within written indenture, and from all actions, proceedings, claims, demands, and liability in respect thereof or otherwise under the within written mortgage (*r*).

Parties.

Recitals: of default; of agreement for purchase.

Testatum.

Mortgagor releases equity of redemption to mortgagee and his heirs.

Habendum.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

(*q*) The *ad valorem* stamp must, of course, cover the whole purchase-money, including the principal and interest released. As to the stamp where the mortgage debt exceeds the purchase-money, Alpe, 15th ed. p. 124.

Stamp.

(*r*) See note (*r*) next page.

XXXII. IN FEE BY MORTGAGOR AND MORTGAGEE.

XXXII. CONVEYANCE *in* FEE *by* MORTGAGOR *and* MORTGAGEE *to* PURCHASER, *the* MORTGAGE *being* PAID OFF (*by* SUPPLEMENTAL DEED) (*s*).

Parties.

THIS CONVEYANCE is made the —— day of ——, in the year ——, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor") (*t*), of the first part; [*mortgagee*], of, &c. (hereinafter called "the mortgagee"), of the second part; [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part: AND is supplemental to a mortgage (*u*) dated the —— day of ——, and made between the vendor, of the one part, and the mortgagee, of the other part, for securing unto the mortgagee the sum of 1,000*l.*, with interest for the same, on the hereditaments

Recitals:

hereinafter described and hereby conveyed: AND WHEREAS the

Proviso that mortgage debt shall not be merged.

(*r*) If it is desired that the mortgage debt should be kept on foot as a protection against mesne incumbrances, add here:—

"PROVIDED ALWAYS, and the said [*mortgagee*] hereby declares that the said principal sum of £——, and all interest henceforth to accrue due in respect thereof, and the term of years vested in the said [*mortgagee*] by virtue of the said mortgage shall not merge in the inheritance of the said hereditaments and premises hereby released, but shall remain and continue so as to be a protection against all mesne incumbrances, charges, estates, and claims whatsoever, if any such there be."

As to non-merger of a mortgage debt on purchase by a mortgagee of the equity of redemption, see *Adams* v. *Angell*, 5 Ch. D. 634; and see further, as to merger, *Thorne* v. *Cann*, [1895] A. C. 11; *Whiteley* v. *Delaney*, [1914] A. C. 132.

Stamp.

(*s*) Stamp, *ad valorem* on amount of purchase-money. This form can be used whether the mortgage was before or after the L. P. A. 1925.

Arrangement of parties.

(*t*) In arranging the order of the parties to a deed, it is usual to place persons having the legal estate before those who have equitable interests only, and persons having freehold estates before those who have chattel interests.

(*u*) The mortgage debt being wholly paid off out of the purchase-money, the mortgage deed will be delivered over to the purchaser, and retained in his custody; there is no objection, therefore, to the conveyance being in the form of a supplemental deed. If, however, the mortgage debt is not wholly paid off, but remains on the security of other property of the vendor, the mortgage deed will continue in the possession of the mortgagee, and the conveyance to the purchaser should be by an independent deed reciting the mortgage.

XXXII. IN FEE BY MORTGAGOR AND MORTGAGEE.

said principal sum of 1,000*l.* is now owing upon the security of the said mortgage, but all interest for the same has been paid up to the day of the date of these presents, as the mortgagee doth hereby acknowledge: AND WHEREAS the purchaser has agreed with the vendor for the purchase of the inheritance in fee simple of the said hereditaments, for the price of 1,500*l.*, out of which sum it has been agreed that the said sum of 1,000*l.* owing to the mortgagee as aforesaid shall be discharged: NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of 1,000*l.* paid by the purchaser (at the request and by the direction of the vendor) to the mortgagee (the receipt of which sum of 1,000*l.* the mortgagee hereby acknowledges); AND ALSO in consideration of the sum of 500*l.* paid by the purchaser to the vendor (the receipt of which sum of 500*l.*, and the payment of which said sum of 1,000*l.*, in manner aforesaid, making together the said purchase-money of 1,500*l.*, the vendor hereby acknowledges); the vendor, as beneficial owner, hereby grants, and the mortgagee, as mortgagee by direction of the vendor, directing as beneficial owner, and to the intent that the term of years vested in the mortgagee by virtue of the said indenture of mortgage [and the Law of Property Act, 1925 (*x*)] may merge and be extinguished, hereby assigns and surrenders to the purchaser, ALL THAT, &c. [*describe parcels* (*y*)]; TO HOLD unto the purchaser, in fee simple, discharged from all principal moneys and interest secured by, and all claims and demands under the said indenture of mortgage.

of money due on mortgage;

of contract for purchase.

Testatum.

The mortgagee, in consideration of the mortgage money, and the mortgagor, in consideration of the remainder of the purchase-money, convey the estate to the purchaser in fee.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

(*x*) The words in square brackets will be inserted where the mortgage was made before the L. P. A. 1925.

(*y*) If the premises are in the occupation of a tenant from year to year, say,

"which premises are now in the occupation of [A. B.], as tenant from year to year to the vendor."

XXXIII. IN FEE BY MORTGAGOR AND EXECUTORS OF MORTGAGEE.

XXXIII. CONVEYANCE *of* FREEHOLDS *by a* MORTGAGOR *and the* EXECUTORS *of a* DECEASED MORTGAGEE (*z*) *to a* PURCHASER *in* FEE, *where* PART ONLY *of the* PURCHASE-MONEY *is* PAID *to the* EXECUTORS. VARIATIONS *where the* WHOLE *of the* PURCHASE-MONEY *is* PAID *to the* MORTGAGOR.

Parties.

THIS CONVEYANCE (*a*) is made the —— day of ——, 19—, BETWEEN [*mortgagor*], of, &c. (hereinafter called "the vendor"), of the first part; [*executor*], of, &c., and [*executor*], of, &c., of the second part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part:

Recitals: of mortgage;

WHEREAS by a mortgage dated, &c., and made between the vendor, of the one part, and [*mortgagee*], of the other part, the hereditaments hereby conveyed were, with other hereditaments, assured by way of mortgage unto the said [*mortgagee*] in fee simple (*b*), to secure to the said [*mortgagee*] payment of the sum of £—— and interest as therein mentioned:

of will of mortgagee; of death of mortgagee;

AND WHEREAS the said [*mortgagee*] duly made and executed his will, dated, &c., and thereby appointed the said [*executors*] to be the executors thereof:

of agreement for sale;

AND WHEREAS the said [*mortgagee*] died on the —— day of ——, 19—, without having revoked or altered his said will, which was on the —— day of ——, 19—, duly proved in the Principal [—— District] Probate Registry, by the said [*executors*]:

AND WHEREAS the vendor has contracted with the purchaser for the sale of the hereditaments hereinafter described and hereby conveyed in fee simple, free from incumbrances, for the sum of £——:

of state of mortgage debt;

AND WHEREAS the said sum of £—— now remains due on the security of the hereinbefore recited mortgage, but all interest thereon has been paid up to the date of these presents;

of agreement for application of part of the purchase-

AND WHEREAS it has been agreed that the sum of £——, part of the said purchase-money, shall be paid to the said [*executors*], in part payment of

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Devolution of trust and mortgage estates.

(*z*) As to the devolution of trust and mortgage estates, see C. (A. 1881, s. 30, as to deaths occurring before 1926, and sect. 3 of the A. E. A. 1925, as to deaths occurring after 1925.

(*a*) Stamp, *ad valorem* on the purchase-money.

(*b*) If the mortgage was made after 1925, say,

"demised by way of mortgage unto the said [*mortgagee*] for the term of —— years to secure, &c."

XXXIII. IN FEE BY MORTGAGOR AND EXECUTORS OF MORTGAGEE.

the said sum of £——, and that they shall concur in these presents in manner hereinafter appearing. NOW THESE PRESENTS WITNESS that, in pursuance of the said agreements, and in consideration of the sum of £—— paid by the purchaser, by the direction of the said [*executors*], in manner following, that is to say, the sum of £——, part thereof, to the said [*executors*], in part payment of the said principal sum of £——, so due and owing on the security of the said mortgage as aforesaid (the receipt of which sum of £—— the said [*executors*] hereby acknowledge), and the sum of £——, the residue thereof, to the vendor (the receipt and payment, in manner aforesaid, of which said sums of £—— and £—— the vendor doth hereby acknowledge), the vendor hereby, as beneficial owner, grants, and the said

money in part payment of mortgage debt (*c*).

Testatum.

Consideration (*d*).

(*c*) Of course executors should be very careful as to the sufficiency of the remaining security before agreeing to the payment of any part of the purchase-money to the mortgagor, as they incur responsibility by parting with part of the security without, at least, a proportionate reduction of the mortgage debt. In the case of a sale of a piece of land, forming a small part of the mortgaged property, it is often inconvenient to mortgagees to receive the purchase-money in part payment of the mortgage debt. If the whole of the purchase-money is to be paid to the mortgagor, substitute the following for the last two recitals in the text:—

Variation.

"AND WHEREAS the said [*executors*], being satisfied that the said principal sum and interest secured by the hereinbefore recited indenture is amply secured by and on the property therein comprised other than the hereditaments hereinafter described and hereby conveyed, have agreed that the whole of the said purchase-money shall be paid to the vendor."

(*d*) If the whole of the purchase-money is to be paid to the mortgagor, say,

"In consideration of the sum of £—— now paid by the purchaser by the direction of the said [*executors*] to the vendor (the receipt and payment whereof in manner aforesaid the vendor and the said [*executors*] respectively acknowledge)."

If the whole of the purchase-money is to be paid to the executors, say, "In consideration of the sum of £—— paid by the purchaser, by the direction of the vendor, to the said executors (the receipt and payment whereof, in manner aforesaid, the said [*executors*] and the vendor hereby respectively acknowledge)."

XXXIII. IN FEE BY MORTGAGOR AND EXECUTORS OF MORTGAGEE.

[*executors*] hereby, as mortgagees, assign and surrender unto the purchaser, ALL THAT, &c. [*describe parcels*]; TO HOLD unto the purchaser, in fee simple, freed and discharged from all principal moneys and interest, and all claims and demands under the said mortgage, and to the intent that the term of years now vested in the [*executors*] under the said mortgage [and the Law of Property Act, 1925 (*e*)] may merge and be extinguished; AND the said [*executors*] hereby acknowledge the right of the purchaser to production of the several deeds and documents mentioned in the schedule hereto.

Habendum.

Freed from mortgage.

Acknowledgment as to deeds.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

XXXIV. CONVEYANCE *by* ADMINISTRATOR *of a* DECEASED MORTGAGOR *and a* MORTGAGEE *in* PERFORMANCE *of a* CONTRACT *for* SALE *by an* INTESTATE.

THIS CONVEYANCE (*f*) is made the —— day of ——, 19—,

Parties.

BETWEEN [*administrator*], of, &c., of the first part; [*mortgagee*] (hereinafter called "the mortgagee"), of, &c., of the second part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part:

Recitals: of mortgage;

WHEREAS by a mortgage dated, &c., and made, &c., in consideration of £—— paid by the mortgagee to the said [*mortgagor*], the said [*mortgagor*] granted the hereditaments hereinafter conveyed to the use of the mortgagee, his heirs and assigns, subject to a proviso for the redemption of the said hereditaments on payment of the sum of £——, with interest at the rate therein mentioned (*g*);

of contract for sale;

AND WHEREAS the said [*mortgagor*], on the —— day of ——, 19—, entered into a contract with the purchaser for the sale to him of the fee simple in

---

(*e*) The words in square brackets should be inserted if the mortgage was made before 1926.

(*f*) Stamp, *ad valorem*.

(*g*) For form of recital where the mortgage was made after 1925, see Form XXXIII., *ante*, p. 414, note (*b*).

XXXIV. BY ADMINISTRATOR OF MORTGAGOR AND MORTGAGEE.

possession, free from incumbrances, of the said hereditaments hereby conveyed, at the price of £——; AND WHEREAS the said [*mortgagor*] died on the —— day of ——, 19—, intestate, and letters of administration of his estate were, on the —— day of ——, 19—, granted out of the Principal [—— District] Probate Registry to the said [*administrator*]; AND WHEREAS the sum of £—— still remains due and owing to the mortgagee upon the security of the said mortgage, but all interest thereon has been paid up to the date of these presents. NOW THESE PRESENTS WITNESS that, in pursuance of the said contract, and in consideration of the sum of £—— paid to the mortgagee by the purchaser at the request of the said [*administrator*] the receipt whereof the mortgagee hereby acknowledges), and in consideration of the sum of £—— paid to the said [*administrator*] by the purchaser (the payment and receipt of which sums of £—— and £——, making together the sum of £——, the said [*administrator*] hereby acknowledges), the said [*administrator*] hereby, as the personal representative of the said [*mortgagor*], deceased, grants, and the mortgagee by direction of the said [*administrator*] hereby, as mortgagee, assigns and surrenders unto the purchaser, ALL THOSE [*describe parcels*], TO HOLD unto the purchaser, in fee simple, freed and discharged from all principal moneys and interest secured by and from all claims and demands under the said mortgage, to the intent that the term of years vested in the mortgagee by virtue of the said mortgage may merge and be extinguished.

of death of vendor intestate;

of state of mortgage debt.

Testatum.

Conveyance.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

XXXV. BY MARRIED WOMAN MARRIED BEFORE 1ST JANUARY, 1883.

XXXV. CONVEYANCE *by* MARRIED WOMAN SEISED *in* FEE (*who was* MARRIED *and whose* TITLE ACCRUED BEFORE *the Married Women's Property Act*, 1882, *came into operation*), *with the* CONCURRENCE *of the Husband.*

Parties.

Recitals:

of will, death and probate;

of death of widow;

of marriage of vendor (*k*);

of agreement for sale.

Testatum.

Conveyance.

Parcels.

Habendum.

THIS CONVEYANCE (*h*) is made the —— day of ——, 19—, BETWEEN [*vendor's husband*], of, &c., and [*vendor*] his wife (*i*), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS [*testator*], deceased, by his will, dated, &c., devised the hereditaments hereinafter described to the use of [A. B.] his wife, since deceased, for her life, with remainder to the use of the said [*vendor*], by her then name of [*maiden name*], and her heirs and assigns: AND WHEREAS [*recite death of testator and probate of his will*]: AND WHEREAS the said [A. B.] died on the —— day of ——, 18—: AND WHEREAS the said [*vendor*], on the —— day of ——, 18—, intermarried with the said [*husband*]: AND WHEREAS the said [*husband*] and [*vendor*] have agreed with the purchaser for the sale to him of the hereditaments hereby conveyed in fee simple in possession, free from incumbrances: NOW THESE PRESENTS WITNESS that, in consideration of the sum of £—— paid by the purchaser to the said [*husband*] and [*vendor*] (the receipt whereof the said [*husband*] and [*vendor*] hereby acknowledge), the said [*vendor*] hereby, as beneficial owner (*l*), with the concurrence of the said [*husband*], grants, and the said [*husband*] hereby, as beneficial owner (*l*), grants and confirms unto the purchaser, ALL THAT, &c. [*parcels*], TO HOLD unto the purchaser in fee simple (*m*).

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

(*h*) Stamp, *ad valorem.*

(*i*) This deed need not be acknowledged by the vendor: see L. P. A. 1925, s. 167.

(*k*) The recitals are to show that the marriage took place, and that the wife's title accrued before 1883.

(*l*) The covenants implied in the deed in the text are those provided for by the L. P. A. 1925.

Acknowledgment and undertaking as to deeds.

(*m*) If any deeds are retained it would seem that they would be in law the property of the husband in right of his wife, and accordingly the

XXXVI. CONVEYANCE *on* SALE *of* FREEHOLDS *by* COMMITTEE *of* LUNATIC'S ESTATE (*n*).

XXXVI. OF LANDS OF A LUNATIC BY HIS COMMITTEE.

THIS CONVEYANCE (*o*) is made the —— day of ——, 19—, BETWEEN [*lunatic*], of, &c., a person of unsound mind acting by [*committee*], of, &c., the committee of his estate (*p*) (hereinafter called "the committee"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS the said [*lunatic*] is seised of or otherwise well entitled to the lands and hereditaments hereby conveyed: AND WHEREAS the committee, as such committee (*q*) as aforesaid, has agreed with the purchaser for the sale to him of the hereditaments hereby conveyed (being part of the freehold property of the said [*lunatic*]) at the price of £——, but such contract was made subject to the proper consent and sanction in that behalf being obtained: AND WHEREAS by an order made in lunacy on the —— day of ——, it was ordered that the said provisional contract should be carried into effect and that the purchaser should pay into Court to the credit, &c., the said sum of £—— and any interest which should become payable thereon under the provisions of the said provisional contract; AND that it should be referred to the Master in Lunacy to settle and approve a proper conveyance of the said lands and hereditaments to the purchaser, and that on such payment as aforesaid the

Parties.

Recitals; of title of lunatic to lands; of conditional contract for sale; of order approving contract for sale;

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acknowledgment for their production and undertaking for their safe custody should be by him as the person retaining the deeds; it is, however, usual and proper to make the wife join in the acknowledgment and undertaking, so as to avoid any question on the point.

(*n*) See the Lunacy Act, 1890, ss. 116, 117, 120, and 124; and Lunacy Rules, 1892, r. 124; and L. P. A. 1925, s. 22. As to sales under the S. L. Acts on behalf of a lunatic, see S. L. A. 1925, s. 28. As to a lunatic not so found by inquisition, see now the Lunacy Act, 1908, s. 1. S. L. Acts.

(*o*) Stamp, *ad valorem*.

(*p*) If the lunatic is not so found by inquisition, say,

"a person of unsound mind not so found by inquisition acting by [*committee*], of, &c., the person appointed to exercise the powers of a committee of his estate."

(*q*) If the lunatic is not so found, instead of "as such committee," say, "as the person appointed to exercise such powers as aforesaid."

XXXVI. OF LANDS OF A LUNATIC BY HIS COMMITTEE.

of payment of purchase-money into Court;

of approval of conveyance by Master in Lunacy.

Testatum.

Conveyance.

committee should execute and join with all necessary parties in executing such conveyance when approved by the said Master. AND WHEREAS the purchaser, on the —— day of ——, paid the sum of £—— into Court to the credit, &c., but no interest became payable on the said sum of £—— under the provisions of the said provisional contract: AND WHEREAS the Master in Lunacy, has settled and approved of these presents as a proper conveyance pursuant to the said order of the —— day of —— of the said hereditaments, as appears by the seal of the said Master affixed in the margin hereof. NOW THESE PRESENTS WITNESS that, in pursuance of the said order of the —— day of ——, and for effectuating the said sale, the said [*lunatic*], acting by the committee, hereby, as beneficial owner (*r*), grants unto the purchaser, ALL THAT [*describe parcels*], TO HOLD unto the purchaser in fee simple.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c. (*s*).

XXXVII. CONVEYANCE *on* SALE *of* FREEHOLDS *by a* COMPANY *in* VOLUNTARY LIQUIDATION.

THIS CONVEYANCE (*t*) is made the —— day of ——, 19—, BETWEEN the —— Company, Limited (hereinafter called "the company"), of the first part; [*liquidator*], of, &c., and [*liquidator*], of, &c., liquidators of the company (hereinafter called "the liquidators"), of the second part; and [*purchaser*], of, &c.

(*r*) The Court has jurisdiction to authorise the implied covenants for title on the part of the lunatic: see *Re Ray*, [1896] 1 Ch. 468. If any muniments of title are retained by the committee, the acknowledgment will be given in the name of the lunatic.

(*s*) The signature will be—

"[*lunatic*], by [*committee*], as committee of his estate" [*or*, "as the person appointed to exercise the powers of a committee of his estate"].

(*t*) Stamp, *ad valorem*. As to the power of liquidators to sell in a winding-up by the Court, see the Companies C. Act, 1908, s. 151 (2) (a), (b); and as to liquidators in a voluntary winding-up having the like powers, see same Act, s. 186 (iv).

(hereinafter called "the purchaser"), of the third part: WHEREAS the company are possessed of or entitled to the hereditaments hereby assured in fee simple, free from incumbrances: AND WHEREAS, by special resolutions of the company, duly passed and confirmed at extraordinary general meetings of the members thereof, held on the —— day of ——, 19—, and the —— day of ——, 19—, respectively, it was in effect resolved (*inter alia*) that the company be wound up voluntarily, and that the said liquidators be and they were thereby appointed liquidators for the purpose of such winding-up: AND WHEREAS the liquidators in the name and on behalf of the company have agreed with the purchaser for the sale to him of the said hereditaments in fee simple in possession, free from incumbrances, for the sum of £——. NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the purchaser to the liquidators (the receipt whereof the liquidators and the company do hereby acknowledge), the company (acting by the liquidators) hereby grant, and the liquidators hereby confirm, unto the purchaser, ALL THOSE, &c. [*describe parcels*], TO HOLD unto the purchaser in fee simple: AND each of them the liquidators, so far as relates to his own acts and deeds, hereby covenants with the purchaser that they the liquidators respectively have not executed or done, or knowingly suffered or been party or privy to any deed or thing whereby the premises hereby conveyed, or any part thereof, are, is, or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby the company, acting by them the liquidators, is prevented from granting the same premises, or any part thereof respectively, in manner aforesaid.

XXXVII. BY A COMPANY IN VOLUNTARY LIQUIDATION.

Recitals: of title of company; of resolutions with a view to reconstruction; of agreement for sale.

Testatum.

Conveyance.

Covenants by liquidators against incumbrances.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS whereof the common seal of the company has been affixed by the direction of the liquidators and the other parties hereto have set their respective hands and seals the day and year first above written.

XXXVIII. OF FREEHOLDS TO RAILWAY COMPANY BY OWNER IN FEE FOR A GROSS SUM.

XXXVIII. CONVEYANCE *of* FREEHOLDS *to a* RAILWAY COMPANY *by a* VENDOR SEISED *in* FEE SIMPLE, *pursuant to* AGREEMENT (*u*).

Parties.

THIS CONVEYANCE (*x*) is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and the —— Railway Company (hereinafter called "the company"), incorporated by the —— Railway Act, 18— (hereinafter called "the Special Act"), of the other part:

Recitals: of title of vendor; of the power of company to take lands;

WHEREAS the vendor is seised of or entitled to the pieces of land and hereditaments hereinafter described and hereby conveyed in fee simple in possession, free from incumbrances: AND WHEREAS the said pieces of land and hereditaments are required by the company for the purposes of their railway and undertaking, and the company are authorised by the Special Act and subsequent Special Acts relating to the company and by the Lands Clauses Consolidation Act, 1845, and other Acts incorporated with the Special Act and subsequent Special Acts, or some of them, to take for the purpose of their railway and undertaking the

of agreement for purchase.

said lands and hereditaments; AND WHEREAS the company have accordingly agreed with the vendor for the purchase of the said lands and hereditaments at the price of £—— (*y*), and it has been agreed that such sum shall include [the value of all mines and minerals thereunder, and also] compensation

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(*u*) If the sale is by a tenant for life it should be carried out under the S. L. A. 1925: see L. P. A. 1925, s. 42 (7).

(*x*) Stamp, *ad valorem,* on the full amount of the consideration, including any compensation: see *Commrs. of I. R.* v. *Glasgow, &c. Railway Co.*, 12 App. Cas. 315.

(*y*) If the sale is in consideration of a rentcharge (under sects. 10, 11 of the L. C. C. Act, 1845, see *Eyton* v. *Denbigh, &c. Rly. Co.*, L. R. 7 Eq. 439; and *Re Lord Gerard* v. *Beecham,* [1894] 3 Ch. 295), say,

"In consideration of a yearly rentcharge of £——, payable half-yearly as hereinafter mentioned, and which consideration has been determined by two able practical surveyors in pursuance of the statutory provisions in that behalf, such consideration to include, &c."

The stamp on a conveyance in consideration of a rentcharge is *ad valorem* on the capitalised value of the rentcharge: see Stamp Act, 1891, s. 56 (2).

for all damage caused by severing the aforesaid pieces of land and hereditaments from any other property of the vendor, or by otherwise injuriously affecting such other property in the exercise of the powers of the said Acts, or any of them (*z*), and shall also be in full satisfaction for all communications, works, and things which might otherwise be required to be made or done under any of the said Acts for the enjoyment, protection, or accommodation of any adjoining property of the vendor (*a*). NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the said sum of £—— (*b*) paid by the company to the vendor (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the company ALL THOSE pieces or parcels of land and hereditaments situate in the parishes of —— and ——, in the county of ——, and containing by admeasurement —— acres, —— roods, and —— perches, or thereabouts, which were late in the occupation of [A. B.], as tenant thereof, but are now in the possession of the company, all which same premises are delineated in the plan drawn in the margin of these presents, and are in the same plan, and

Testatum.

Conveyance.

(*z*) See L. C. C. Act, 1845, s. 63; Railways C. C. Act, 1845, ss. 6, 16.

(*a*) If the sale is by a tenant for life, then the purchase-money will be paid to the trustees of the settlement. If, however, the company elect to have it paid into Court (which will be rare), a recital of the payment in should be added.

(*b*) If the consideration is a rentcharge, say,

"in consideration of the rentcharge hereinafter limited and of the covenants by the company hereinafter contained, and in exercise of all statutory or other provisions in that behalf, the vendor hereby, as beneficial owner, grants, &c."

and the habendum will be,

"unto the company and their assigns for ever, they the company, or their assigns, yielding and paying henceforth to the vendor and his assigns" [*in the case of a tenant for life, say,* "his successors and assigns"] "for ever a clear yearly rentcharge of £——, payable half-yearly on the —— day of —— and the —— day of ——, free from all taxes and deductions (except property tax), the first half-yearly payment to be made on the —— day of —— next, and the said rentcharge to be a first charge on the tolls and rates authorised by and payable under the Special Acts of the company."

XXXVIII. OF FREEHOLDS TO RAILWAY COMPANY BY OWNER IN FEE FOR A GROSS SUM.

also in the plans and books of reference of the said railway for the parishes of —— and —— aforesaid respectively, distinguished by the numbers —— respectively; except and reserving out of the grant hereby made [*or*, "together with"] all mines and minerals under the same premises (*c*), To HOLD the said pieces of land and hereditaments, and all and singular other the premises hereby assured, unto the company absolutely (*d*); AND the vendor hereby acknowledges the right of the company to the production and delivery of copies of the several deeds and documents specified in the schedule hereto (possession of which it has been agreed shall be retained by the vendor), and hereby undertakes for the safe custody thereof.

Acknowledgment and undertaking as to deeds.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

Mines and minerals.

(*c*) By sect. 77 of the Railways Clauses Consolidation Act, 1845, a railway company is not entitled to any mines or minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless the same shall have been expressly purchased; and all such mines, except as aforesaid, are to be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

(*d*) If the consideration is a rentcharge add a covenant by the company,

"And in consideration of the premises, the company hereby covenants with the vendor, his heirs and assigns, that the company will at all times hereafter duly pay the said rentcharge to the person or persons at the times and in the manner to, at, and in which the same is hereinbefore made payable without deduction except as aforesaid."

XXXIX. CONVEYANCE *of* FREEHOLDS *to a* LOCAL EDUCATION AUTHORITY, *under the Lands Clauses Consolidation Act*, 1845 (*e*).

XXXIX. OF FREEHOLDS TO A SCHOOL BOARD.

THIS CONVEYANCE (*f*) is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and The Council of the County [Borough] [Urban District] of —— [*or*, The Mayor, Aldermen, and Burgesses of —— by their Council], acting as the Local Education Authority (hereinafter called "the council") [*corporation*], of the other part: WHEREAS the vendor is seised of the hereditaments hereby assured in fee simple in possession, free from incumbrances: AND WHEREAS the said hereditaments are required by the Council for the purposes of providing sufficient public school accommodation for their district in accordance with the provisions of the Education Act, 1921, and the general Acts incorporated therewith, and the council are authorised by the said Acts to take the said hereditaments for the purposes aforesaid, and have agreed with the vendor for the purchase of the said hereditaments in fee simple, free from incumbrances, at the price of £——: NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— paid to the vendor by the council (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the council, ALL THAT [*describe parcels*], TO HOLD unto the council for the purposes aforesaid absolutely.

Parties.

Recitals: of vendor's seisin;

Testatum.

Conveyance.

[*Add an acknowledgment and undertaking as to deeds if required*, ante, *p.* 361.]

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

(*e*) See Education Act, 1921, s. 3, and sects. 110 to 117; and as to sites in London, sect. 18 (5).

Powers of local education authority for compulsory purchase of sites for schools.

(*f*) Stamp, *ad valorem*.

XL. OF FREEHOLDS TO A DISTRICT COUNCIL.

XL. CONVEYANCE *of* FREEHOLDS *to a* DISTRICT COUNCIL *under the Public Health Acts* (*g*).

Parties.

THIS CONVEYANCE (*h*) is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and the Urban District Council of —— (hereinafter called "the council"), of the other part: WHEREAS the council is empowered to acquire land under the Public Health Acts, 1875 to 1925, or one of the said Acts, for the purposes of, &c. [*state the purposes for which the land is acquired*]: AND WHEREAS the vendor is seised of the hereditaments hereby assured for an estate in fee simple in possession, free from incumbrances: AND WHEREAS the council, in exercise of their powers, have agreed with the vendor to purchase the said hereditaments for an estate in fee simple in possession, free from incumbrances, for the sum of £——: NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the vendor by the council (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the council, ALL, &c. [*parcels*], TO HOLD unto the council absolutely for the purposes aforesaid.

Recitals:

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

XLI. CONVEYANCE *of* FREEHOLDS *by* MORTGAGEE *and* TRUSTEE *in* BANKRUPTCY *of* MORTGAGOR, *to a* PURCHASER.

Parties (*k*).

THIS CONVEYANCE (*i*) is made the —— day of ——, 19—, BETWEEN [*mortgagee*], of, &c. (hereinafter called "the mort-

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(*g*) This conveyance, duly stamped, must be produced to the Commissioners of Inland Revenue, with a copy of the Act: see Finance Act, 1895, s. 12; Alpe, 16th ed. p. 140.

(*h*) Stamp, *ad valorem*.

(*i*) Stamp, *ad valorem*.

(*k*) If the mortgage is made after 1925, the recital of the mortgage will follow the recital in note (*y*) to Form XXVII. at p. 404.

XLI. BY MORTGAGEE AND TRUSTEE IN BANKRUPTCY.

gagee"), of the first part; [*trustee in bankruptcy*], of, &c. (hereinafter called "the trustee"), of the second part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the third part; WHEREAS by a mortgage dated the —— day of ——, 19—, and made between [*mortgagor*], of the one part, and the mortgagee, of the other part, in consideration of the sum of 30,000*l.* then paid by the mortgagee to the said [*mortgagor*], the hereditaments hereinafter described were conveyed by the said [*mortgagor*] to the use of the mortgagee in fee simple, subject to a proviso for the redemption of the said hereditaments, upon payment to the mortgagee of the sum of 30,000*l.* with interest for the same at the rate and on the day therein mentioned: AND WHEREAS by an order, dated the —— day of ——, of the High Court of Justice in Bankruptcy [*or*, "of the County Court of ——, holden at —— in Bankruptcy"], the said [*mortgagor*] was adjudicated bankrupt, and the trustee was duly appointed trustee of the estate and effects of the said [*mortgagor*], and on the —— day of —— the said appointment was duly certified by the Board of Trade: AND WHEREAS the trustee, as such trustee as aforesaid, has agreed with the purchaser for the sale to him of the hereditaments hereby assured, and the inheritance thereof in fee simple in possession, free from incumbrances, at the price of 50,000*l.*: AND WHEREAS there is now owing to the mortgagee on the security of the said indenture of mortgage the principal sum of 30,000*l.* only, all interest thereon having been paid up to the date of these presents, and it has been agreed that the said sum of 30,000*l.* shall

Recitals: of mortgage; of proceedings in bankruptcy; of appointment of trustee; of contract (*l*).

(*l*) As to the appointment and powers of a trustee in bankruptcy, see Bankruptcy Act, 1914, ss. 19, 48—69, 76—95. The title of the trustee dates back to the time of the act of bankruptcy: sect. 37 of the 1914 Act. As to what property vests in the trustee, see sects. 38, 53 of the same Act. Until appointment of the trustee the property vests in the official receiver as trustee (sect. 53 of the same Act), who is also to act as trustee during any vacancy in the office of trustee (sect. 78 (4)): see *Turquand* v. *Board of Trade*, 11 App. Cas. 286. Dealings by the bankrupt with property, both real and personal, acquired after adjudication *bonâ fide* and for value, and completed before intervention by the trustee, are valid as against the trustee: see sect. 47 of the Bankruptcy Act, 1914; adopting the rule laid down in *Cohen* v. *Mitchell*, 25 Q. B. D. at p. 267. Neither the trustee nor any member of the committee of inspection can purchase any part of the bankrupt's estate: Bankruptcy Rules, 1886, r. 316; *Re Gallard*, [1897] 2 Q. B. 8.

Powers, &c. of trustees. After-acquired property of bankrupt. Purchase by trustee.

XLI. BY MORTGAGEE AND TRUSTEE IN BANKRUPTCY.

be paid out of the purchase-money: NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of 50,000*l.* this day paid by the purchaser to the persons, and in the sums and manner hereinafter mentioned, that is to say, 30,000*l.* part thereof to the mortgagee, at the request of the trustee (the receipt whereof the said mortgagee hereby acknowledges); and 20,000*l.* the residue thereof to the trustee (the payment and receipt respectively as aforesaid of which said sums of 30,000*l.* and 20,000*l.* the trustee hereby acknowledges), the mortgagee, as mortgagee, at the request of the trustee, grants and releases, and the trustee, as trustee, grants unto the purchaser, ALL THAT [*parcels*]: TO HOLD unto the purchaser in fee simple, freed and discharged from all moneys intended to be secured by and from all claims and demands under the hereinbefore recited indenture of mortgage.

Conveyance.

Habendum.

Discharged from mortgages.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

XLII. CONVEYANCE *of* MINES, *with* GRANT *of* POWERS *of* WORKING, *subject to* LIABILITY *to make* COMPENSATION *for* INJURY *to* SURFACE (*m*).

Parties.

THIS CONVEYANCE (*n*) is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS [*recite title of vendor*]; AND WHEREAS the vendor has agreed with the purchaser for the sale to him of the mines and hereditaments hereby conveyed and the inheritance thereof in fee simple, together with such powers for the winning and carrying away thereof as are hereinafter contained, for the sum of £——. NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the vendor by

Recitals: of agreement for sale of mines.

Testatum.

(*m*) As to sale of minerals under S. L. A. 1925, see sect. 50 of that Act. Trustees for sale have all the powers of a tenant for life: see L. P. A. 1925, s. 28. As to mortgagees, see L. P. A. 1925, ss. 92 and 101 (2) (ii).

(*n*) Stamp, *ad valorem*.

XLII. OF MINES APART FROM SURFACE.

the purchaser (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the purchaser, ALL THOSE the mines, veins, and seams of coal and ironstone, and all other mines and minerals whatever, situate and lying in or under the several parcels or closes of land and hereditaments, containing in the whole —— acres or thereabouts, more particularly described, with the abuttals and acreage thereof, in the first schedule hereto, TOGETHER with full and free liberty for the purchaser and his successors in title, and his and their lessees, agents, and workmen, and for all other persons by his or their or any of their authority or permission at any time and from time to time, but by outstroke and underground workings only, and without entering upon the surface of the said parcels or closes of land and hereditaments, or any of them, to search for, get, work, take away, and dispose of the said mines and minerals hereby conveyed, and to do all things necessary or expedient for the purposes aforesaid or any of them, BUT SUBJECT to the liability of the purchaser, his heirs and assigns, to make compensation to the vendor and his successors in title, and his and their lessees, the owners or occupiers for the time being of the surface of the said parcels or closes of land and hereditaments described in the first schedule hereto for all and any damage or injury to the same surface which shall or may be caused or occasioned by or by reason of the exercise of the liberties, powers, and authorities hereinbefore mentioned, or any of them, TO HOLD the said mines and minerals, and all other the premises hereby conveyed, subject as aforesaid, unto the purchaser in fee simple. AND the vendor hereby acknowledges the right of the purchaser to the production and delivery of copies of the deeds and muniments of title specified in the second schedule hereto, which are retained by the vendor, and hereby undertakes for the safe custody thereof (*o*).

Conveyance.

Parcels.

Powers to get minerals by underground workings.

Subject to compensation.

Habendum.

Acknowledgment, &c., as to muniments of title.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

(*Description of closes of land under which the mines conveyed are situate.*)

THE SECOND SCHEDULE ABOVE REFERRED TO.

(*Muniments of title.*)

(*o*) Presumably the purchase-money will be over 500*l.*, in which case the statement as to value will not be required.

XLIII. OF FREEHOLDS WITH RESERVATION OF MINES.

XLIII. CONVEYANCE *of* LAND *to a* PURCHASER *with* EXCEPTION *of the* MINES, *&c., and* RESERVATION *of* POWERS *for the* VENDOR *to* WORK, *&c. the same,* WITHOUT *being* LIABLE *to make* COMPENSATION *for* DAMAGE *to the* SURFACE *of the* LANDS SOLD (*p*).

THIS CONVEYANCE (*q*), made the —— day of ——, 19—,

Parties. BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"),

Testatum. of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part, WITNESSETH that, in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the

Conveyance. vendor hereby, as beneficial owner, grants unto the purchaser,

Exception of mines and minerals, ALL THOSE, &c. [*describe parcels*], EXCEPTING out of this conveyance, and always reserving unto the vendor, in fee simple, all mines, veins, and seams of coal, cannel, and ironstone, and all other mines and minerals lying and being within or under

and liberty for vendor to work the same, the said lands and hereditaments hereby conveyed, TOGETHER with full and free liberty at any time and from time to time, but by underground workings only, and without entering upon the surface of the said lands and hereditaments hereby conveyed, or any of them, to search for, get, work, take away, and dispose of the said excepted premises, and also all or any other mines or minerals lying and being within or under any adjoining and neighbouring lands, and with or without leaving any support to the surface of the said lands and hereditaments hereby conveyed, and whether such surface shall or shall not, by any subsidence thereof or otherwise, be depressed, lowered, damaged, or destroyed, and to make, maintain, and use any watercourses, ways, and other works under any part of the said lands and hereditaments hereby conveyed as he the vendor, or other the persons availing themselves

without being liable for damage to surface. of these present powers shall think proper; he the vendor, and such other persons as aforesaid [not being in any manner liable or responsible (*r*)] for any depression, subsidence, damage, or injury

(*p*) As to tenant for life, see S. L. A. 1925, s. 50. Trustees for sale have the same powers: see L. P. A. s. 28. As to mortgagees, see L. P. A. s. 101 (2) (ii).

(*q*) Stamp, *ad valorem*.

(*r*) If so intended, instead of the words in brackets the following may be inserted:—

Making due compensation for damage. "making from time to time due compensation to the purchaser

whatsoever which shall or may be caused or occasioned to the surface of the said lands and hereditaments hereby conveyed, or any part thereof, or to any erection, building, engine, machinery, matter, or thing now being or hereafter to be in or upon the said lands and hereditaments hereby conveyed by the working or getting and carrying away, of the said excepted premises, or such other mines and minerals as aforesaid, To HOLD all the same premises except as aforesaid, and subject to the exercise of all or any of the liberties and powers hereinbefore reserved unto the purchaser in fee simple.

XLIII. OF FREEHOLDS WITH RESERVATION OF MINES.

Habendum.

[*Acknowledgment and undertaking as to muniments of title,* ante, *p.* 361.]

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

THE SCHEDULE ABOVE REFERRED TO.

(*Muniments of title.*)

XLIV. GRANT *of a* RIGHT OF WAY *through a certain* ROAD *with* HORSES, CARRIAGES, *&c.* (*s*).

THIS DEED OF GRANT (*t*), made the —— day of ——, 19—, BETWEEN [*grantor*], of, &c. (hereinafter called "the vendor"), Parties.

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and his successors in title, and his and their tenants, or other the owners or occupiers for the time being of the said lands and hereditaments."

(*s*) "An easement is a privilege, without profit, which the owner of one tenement has a right to enjoy in respect of that tenement in or over the tenement of another person, by reason whereof the latter is obliged to suffer, or refrain from doing something on his own tenement for the advantage of the former": Goddard on the Law of Easements, 7th ed. p. 2. An easement is an incorporeal hereditament and does not confer any estate or interest in the land to which it relates: thus a grant of a right of way does not pass the soil of the road: *Clifford* v. *Hoare,* L. R. 9 C. P. 362: and accordingly the grantee cannot prevent the landowner from granting to a third person a similar easement over the same land. As to the distinction between an *easement* and *profit à prendre,* and

Definition of easement.

Easements are incorporeal hereditaments.

(*t*) Stamp, *ad valorem.*

XLIV. GRANT OF RIGHT OF WAY.

of the one part, and [*grantee*], of, &c. (hereinafter called "the purchaser"), of the other part, WITNESSETH that, in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the purchaser in fee simple, full and free right and liberty to be annexed to the messuage and farm, situate in the parish of ——, in the county of ——, and known as [X.] Farm, and to be exercisable by the owners or occupiers of the farm, and their servants, workmen and licensees from time to time, and at all times hereafter, by night and by day, and for all purposes (*u*), with or without horses, carts,

Testatum.

Grant of right of way.

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generally as to easements, see Goddard on Easements, 7th ed.; and Gale on Easements, 8th ed. An easement necessarily implies the existence of a dominant tenement to which the right is attached, and a servient tenement which is subject to the obligation: see *Rangeley* v. *Midland Rail. Co.*, L. R. 3 Ch. at p. 310. Strictly speaking, therefore, all easements are appurtenant, and there can be no such thing as an easement in gross. A right of way or any similar right which is not appurtenant to any tenement is only a personal right, and is not capable of assignment: *Ackroyd* v. *Smith*, 10 C. B. 164; *Thorpe* v. *Brumfitt*, L. R. 8 Ch. 650. It is essential to the existence of an easement that the dominant and servient tenements should belong to different owners; if the seisin of both tenements in fee simple becomes vested in the same owner, the easement will merge in the dominant tenement, and so be extinguished: *Holmes* v. *Goring*, 2 Bing. 83; *James* v. *Plant*, 4 A. & E. 749. An easement does not impose any active duty on the owner of the servient tenement; his obligation is merely to suffer the user of the land in accordance with the nature of the easement, and to refrain from doing anything which will obstruct or prejudice the enjoyment thereof by the owner of the dominant tenement: *Jones* v. *Pritchard*, [1908] 1 Ch. 630, at 637. Easements may arise under or by virtue of an express or implied grant, or by devise, or under some statutory enactment, or by prescription, or by custom. In the eye of the law, however, it would seem that all easements are regarded as arising by virtue of an express or implied grant. "Every easement has its origin in a grant, express or implied; the person who can make that grant must be the owner of the land": *per* Cairns, L.J., in *Rangeley* v. *Midland Rail. Co.*, L. R. 3 Ch. at p. 310. Sect. 62 of the Conveyancing Act, 1881, being repealed and not re-enacted, easements cannot now be created by way of use, but they can be granted or reserved in fee simple or for a term of years absolute: L. P. A. 1925, s. 1 (2) (a), and sect. 51. As to tenants for life, see S. L. A. 1925, s. 38. Trustees for sale have the like powers: L. P. A. 1925, s. 28.

Existence of distinct dominant and servient tenements essential to easement.

Extinction of easements by unity of seisin.

Easement imposes no active obligation on owner of servient tenement.

Creation of easements.

(*u*) In granting or reserving rights of way care should be taken to describe with distinctness whether it is a foot-way, horse-way, carriage-

Suggestions in granting rights of way.

waggons, carriages, traction engines, motor cars and other vehicles, laden or unladen, to go, pass, and repass, and also to drive cattle and other beasts through, along, and over a certain road or way lately formed and fenced off by the said [*grantor*] out of, and from and intersecting certain closes or fields in the said parish of —— belonging to the vendor in fee simple, which road or way is —— feet in width and —— yards in length, or thereabouts, and leads from the turnpike-road, or public highway, between —— and ——, to a certain road or lane communicating with the said farm and lands of the purchaser, called the [X.] Farm, and which same road or way the right and liberty of user whereof in manner aforesaid is hereby granted, and the course and direction thereof are delineated in the map or plan indorsed on these presents; AND also full and free right and liberty, from time to time and at all times hereafter, with workmen, horses, carts, and other persons and things, to enter in and upon the said road or way, the right of user whereof is hereby granted, and to make and lay causeways or otherwise to repair and amend the same road or way as there shall be occasion; AND the purchaser covenants with the vendor, from time to time and at all times, to repair and amend, and keep repaired and amended in a proper, substantial, and workman-like manner, the said road or way, the right and liberty of user whereof is hereby granted, and also the gate erected by the vendor

Power to enter and repair (*x*).

Covenant by grantee to repair road (*x*).

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way, or drift-way, which is intended: see *Bullard* v. *Dyson*, 1 Taun. 283. "*Primâ facie* the grant of a right of way is the grant of a right of way having regard to the nature of the road over which it is granted, and the purpose for which it is intended to be used": *per* Jessel, M.R., in *Cannon* v. *Villars*, 8 Ch. D. 415; see also *Serff* v. *Acton Local Board*, 31 Ch. D. 679; *Milner's Safe Co.* v. *G. N. & City Rail. Co.*, [1907] 1 Ch. 208. Care should also be taken to mention with precision the course and direction, the commencement and end, of the way, and, when possible, the way should be described by reference to a plan: see *Deacon* v. *S. E. Rail. Co.*, 61 L. T. 377; and the land to which the right of way is annexed should be defined carefully: see S. L. A. 1925, s. 187. It is probable that the grant to the purchaser in fee simple would include a right of way for his licensees, but it is safer to include them expressly: see *Hammond* v. *Prentice Brothers*, (1920) 1 Ch. 201.

(*x*) This express power does not seem to be strictly necessary, but its insertion is usual, and may be useful as obviating any question as to the grantee's rights. The covenant will be inserted if stipulated for.

XLIV. GRANT OF RIGHT OF WAY.

across the same road at the northern end or extremity thereof, and the lock and fastening belonging thereto, and from time to time, and at all times hereafter, to repair and renew the quickset hedge and fence lately planted by the vendor on both sides of the said last-mentioned road or way; AND also if and so long as the vendor, or other the owner or owners for the time being of the said lands adjoining the same road shall so require, to keep the said gate securely locked when not in use.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

XLV. GRANT *of a* RIGHT *to* USE *a* SUBTERRANEAN WATERCOURSE *under the* LAND, *and also a* SURFACE STREAM *flowing through the* SAME (*y*).

THIS DEED OF GRANT (*z*) is made the —— day of ——, 19—,

Parties.

BETWEEN [*grantor*], of, &c. (hereinafter called "the grantor"), of the one part, and [*grantee*], of, &c. (hereinafter called "the purchaser"), of the other part:

Recitals: erection of mill;

WHEREAS the purchaser has recently erected a cotton mill or manufactory, known as ——, on his lands at ——, in the county of ——: AND WHEREAS certain lands of the grantor, as shown on the plan drawn in the margin of these presents and therein coloured pink, are interposed between the land of the purchaser and a brook, called the ——, flowing through lands of the grantor in the parish of ——, in the county of —— aforesaid:

of construction of tunnel;

AND WHEREAS the purchaser has, by the permission of the grantor, entered upon the said land of the grantor, coloured pink on the said plan, and has constructed an underground culvert or tunnel therein for the purpose of conducting water from the said brook to his said mill, and also an open watercourse or channel for conducting the said water from the same mill back into the said brook in manner hereinafter appearing:

of agreement to grant easement.

AND WHEREAS the grantor has agreed with the purchaser to grant to him such easement or right of watercourse through, under,

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(*y*) As to the nature of easements, the grant of easements, and the rights of the owners of the servient and dominant tenements respectively, see the notes to the last precedent.

(*z*) Stamp, *ad valorem*.

and along the said land of the grantor, as hereinafter appears, for the sum of £——: NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— paid to the grantor by the purchaser (the receipt whereof is hereby acknowledged), the grantor hereby, as beneficial owner, grants unto the purchaser in fee simple the full and free right and liberty of drawing and using the water from the said brook, called the ——, for working the said mill, and for all the purposes thereof, and also the full right to the free and uninterrupted flow of water from the point marked A in the said plan on the bank of the said brook, to the said mill through the said underground culvert or tunnel, so constructed in the said land as aforesaid (the course of such culvert or tunnel being delineated on the said plan, and therein coloured red), and also from the said mill to the point marked B in the said plan on the bank of the said brook, through and along the said open channel or watercourse (the course of such open watercourse or channel being delineated on the said plan, and therein coloured blue), and also the full and free right and liberty henceforth for ever to use the said underground channel or tunnel and open watercourse respectively, and to maintain the same in a proper state of repair and condition respectively: AND full and free liberty from time to time to inspect the state and condition of, and uphold, amend, repair, cleanse, and maintain the said underground tunnel and open watercourse respectively, and for the purposes aforesaid, or any of them, at all reasonable times with surveyors, workmen, horses, carts, waggons, and other persons and things to enter upon the said close or parcel of land, or any part thereof, and to bring and place upon the same such materials, implements, and things as may be necessary, and to open and dig up the surface of the same close or parcel of land, to the intent that the rights and liberties hereby granted shall be annexed to the said mill of the purchaser: PROVIDED ALWAYS that the grantor shall not be in any way bound to retain the surface of the said close or parcel of land at its present level, or to refrain from erecting buildings over the said underground culvert or tunnel, except at the part of the course thereof from the point

Testatum.

Grant of easement.

Proviso that grantor may erect buildings (*a*).

(*a*) See, as to this, *Goodhart* v. *Hyett*, 25 Ch. D. 182.

XLV. GRANT OF WATER-COURSE.

marked A to the point marked C, and from the point marked D to the point marked E on the said plan: PROVIDED ALSO, and the purchaser for himself and his assigns, hereby covenants with the grantor that he the purchaser, or other the owner or owners, or occupier or occupiers of the said mill, hereafter well and sufficiently shall uphold, amend, cleanse, and maintain the said underground culvert or tunnel and open watercourse respectively, in substantial and proper repair and condition, and shall execute all necessary works and operations for those purposes in a workmanlike manner, and so as not to cause a nuisance to the said land coloured pink on the said plan, or the owners, tenants, or occupiers for the time being thereof, and shall remove and carry away all stones, gravel, clay, sand, soil, and rubbish which shall be from time to time taken out of the said underground culvert or tunnel and open watercourse respectively, and shall replace and restore and level the surface of the said land whenever and wherever disturbed by reason of any such works or operations as aforesaid, and shall not unnecessarily damage or injure the surface or the crops for the time being thereon, and shall at all times before entering upon the said land, or any part thereof, for the purpose of any such works or operations as aforesaid (except in the case of sudden obstruction of the flow of water or other extraordinary accident), give at least —— days' notice in writing of his intention so to do to the grantor, or other the owner or occupier for the time being of the said close or parcel of land: AND shall at all times hereafter keep indemnified the grantor, or other the owner or owners, or occupier or occupiers, of the said land, from and against all damage, injury, or nuisance which may be caused or occasioned by the said underground culvert or tunnel and open watercourse, or either of them, or by any such works or operations as aforesaid, to the said land, or to any buildings for the time being erected and being thereon, and also from and against all actions, proceedings, costs, expenses, claims, and demands for or in respect of any diminution or pollution of the flow of water by or by reason of the diversion thereof through the said underground culvert or tunnel and open watercourse respectively, or by or by reason of any work, operation, act, or default of the purchaser, or otherwise in relation to the premises.

Covenants by grantee to maintain the watercourses, and for indemnity.

[*Add statement as to value,* ante, *p.* 360, *if appropriate.*]

IN WITNESS, &c.

XLVI. CONVEYANCE *in* FEE *of* LAND, *in* CONSIDERATION *of a* PERPETUAL RENTCHARGE. COVENANT *to* BUILD, REPAIR, *and* INSURE (*b*).

XLVI. IN FEE IN CONSIDERATION OF FEE FARM RENT.

THIS CONVEYANCE (*c*) is made the —— day of ——, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS the vendor, being seised of the lands and hereditaments hereby assured in fee simple, free from incumbrances, has agreed with the purchaser for the sale to him of the same in fee simple, free from incumbrances, in consideration of the yearly rentcharge hereinafter reserved and made payable, and of the covenants on the part of the purchaser hereinafter contained. NOW THESE PRESENTS WITNESS as follows:—

Parties.

Recitals: of vendor's seisin; of contract for conveyance.

Testatum.

1. In pursuance of the said agreement, and in consideration of the yearly rentcharge of £——, hereinafter reserved to the vendor, and of the covenants on the part of the purchaser hereinafter contained, the vendor hereby, as beneficial owner, grants unto the purchaser, ALL THAT, &c. [*parcels*]: TO HOLD the same unto the purchaser in fee simple, reserving, nevertheless, to the vendor in fee simple out of the hereditaments hereby granted a perpetual yearly rentcharge of £——, to commence from the date of these presents, and to be charged upon, and issuing out of all the hereditaments hereby granted, and to be paid, without any deduction, by equal quarterly payments upon the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, the first of such payments to be made on the —— day of —— next (*d*).

Conveyance.

Habendum to uses limiting rentcharge, with remainder to purchaser in fee.

(*b*) Where lands are sold in consideration of a rent issuing out of them for the benefit of the vendor, it should be stipulated in the contract by whom the expense of the conveyance is to be borne; for, as the vendor takes an interest under the limitations, it does not follow that the rule which throws this expense upon the purchaser in ordinary cases, would apply to this.

As to costs, where lands are sold in consideration of a rentcharge.

(*c*) The stamp will be *ad valorem* on the total amount of the rentcharge payable during twenty years: see sect. 56 (2) of the Stamp Act, 1891. Inasmuch as the rentcharge is in perpetuity it is a legal estate, and it does not require registration as a land charge.

Stamp.

(*d*) Powers of distress and entry may be omitted in reliance on the provisions contained in sect. 121 of the L. P. A. 1925.

Powers of distress and entry.

XLVI. IN FEE IN CONSIDERATION OF FEE FARM RENT.

2. The purchaser hereby covenants with the vendor to pay the said rentcharge of £——, at the times and in manner hereinbefore appointed in that behalf as the same shall become payable, without any deduction; AND, FURTHER, within two years from the date of these presents, to erect and build, on the premises hereby conveyed, with proper materials, and in a workmanlike manner, one good and substantial messuage or dwelling-house, with suitable offices, to be completed and finished within the period aforesaid, and on such erection and building to lay out and expend the sum of £—— at the least, and, on the request of the vendor, to produce to the vendor the vouchers or receipts for such expenditure, and at all times hereafter well and sufficiently to repair or replace and to keep in good condition the said messuage or dwelling-house so to be erected and built, and to insure and keep insured the same in some respectable office for insurance against fire to the amount of not less than £——, and from time to time, upon request, to produce to the vendor the policy of insurance for the time being in force, and the receipt for the last premium that shall have fallen due in respect thereof.

Covenant by purchaser to pay rent; and to expend £—— in erecting a messuage.

3. PROVIDED ALWAYS, and it is hereby agreed and declared, that in case the purchaser shall neglect or fail to perform any of the covenants and stipulations hereinbefore expressed, for the erection and building of a messuage or dwelling-house on the premises hereby conveyed, and for the repair and insurance thereof in manner aforesaid, and the production of the vouchers or receipts relating to the expenditure hereinbefore covenanted to be made therein, it shall be lawful for the vendor, or his assigns, to enter into and upon the premises hereby conveyed, to execute and do all such works, operations, acts, and things as may be necessary for or in relation to the erection and building and maintenance and insurance of the said messuage or dwelling-house pursuant to the covenants and stipulations in that behalf hereinbefore contained, and to hold and enjoy the same premises and receive the rents and profits thereof, until all the said covenants and stipulations shall have been fully performed and satisfied, and all costs, charges, and expenses properly incurred by the vendor or his assigns in or about any such works, operations, acts, or things as aforesaid, or caused or occasioned by breach of any of the said covenants or stipulations, with interest thereon at the rate of five per cent. per annum from the dates at

Proviso for re-entry, on non-performance of covenant to build.

which the same shall respectively have been incurred shall have been fully paid and satisfied out of the said rents and profits (*e*).

Restriction of powers of entry, &c. to avoid perpetuity.

4. PROVIDED ALWAYS, and it is hereby agreed, that the powers of entry upon and holding and enjoying and receiving the rents and profits of the said premises conferred on the vendor by the third clause of these presents shall be exercisable only during the life of the survivor of the issue now living of His present Majesty King George and twenty-one years after the death of such survivor, and such further period (if any) as shall be lawful.

[*Acknowledgment and undertaking as to deeds and documents of title, if required,* ante, *p.* 361] (*f*).

XLVII. CONVEYANCE *of a* PLOT *of* LAND *on an* ESTATE LAID OUT *for* BUILDING—EXCEPTION *of* MINES *and* MINERALS—RESTRICTIVE COVENANTS *as to* MODE *of* BUILDING, *and as to* USER *of* LAND (*g*).

THIS CONVEYANCE (*h*), made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part, WITNESSETH, that in consideration of the sum of £—— paid by the purchaser to the vendor, for the purchase of the unincumbered fee simple of the hereditaments hereby assured (the receipt whereof is hereby acknowledged), and also in consideration of the covenants on the part of the purchaser hereinafter contained, the vendor hereby, as beneficial owner, grants unto the purchaser, ALL THAT plot or parcel of land forming part of the —— estate recently laid out by the vendor for sale in lots under a general scheme of development; AND which said plot or parcel of land is bounded on the —— side thereof by, &c. [*describing boundaries*], and con-

Parties.

Testatum.

Conveyance.

Parcels.

(*e*) The rentcharge will be redeemable under sect. 191 of the L. P. A. 1925.

(*f*) A counterpart of this deed is usually executed to be retained by the grantee of the rent, though under L. P. A. 1925, s. 65, the execution of this deed by the purchaser is not necessary.

(*g*) As to settled land, see S. L. A. 1925, ss. 49 and 50.

(*h*) Stamp, *ad valorem* on the purchase-money, and a further stamp of 10*s.* in respect of the covenants.

XLVII. OF FREEHOLD PLOT OF LAND SUBJECT TO BUILDING COVENANTS.

tains by admeasurement —— superficial square yards or thereabouts, all which premises are delineated on the part of the plan of the said —— estate indorsed hereon, and are therein numbered ——, and coloured red; TOGETHER with full and free liberty for the purchaser, with or without horses, carriages, carts, or waggons, however propelled, to pass and repass over and along any of the reads upon the said —— estate, for the purpose of going to or returning from the said plot of land; EXCEPTING out of these presents, and always reserving unto the vendor in fee simple, all mines and minerals whatsoever, lying within or under the said plot of land hereby conveyed, with liberty for the vendor to dig for, work, get, and carry away the same by underground workings only, without breaking the surface of the plot of land and premises hereby conveyed, he and they leaving sufficient pillars to support the said surface and any buildings to be erected thereon: TO HOLD all the premises hereby assured, subject to the exceptions and reservations aforesaid, and also subject to the restrictions and undertaking on the part of the purchaser, with regard to the mode of building and user of the premises and subject to the obligation to repair, or contribute to the cost of repairing, the roads and ways adjoining the premises, the performance whereof is intended to be further secured by the covenants on the part of the purchaser hereinafter contained, and intended to be for the protection and benefit of the vendor, and his successors in title for the time being of the other parts of the said —— estate, unto the purchaser in fee simple: AND the purchaser hereby covenants with the vendor in manner following, that is to say:—

Right of way.

Exception and reservation of mines, &c., and powers of working.

Habendum.

Covenants by purchaser (*i*).

To fence in land.

1. To erect forthwith, and for ever thereafter maintain, a good and sufficient fence or partition of oak or wood, not less than ——,

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(*i*) See *Elliston* v. *Reacher*, [1908] 2 Ch. 374 (affirmed *ibid.* 665), in which case Parker, J., lays down certain "points" which must be established in order to bring the principles of *Renals* v. *Cowlishaw*, 9 Ch. D. 125; 11 Ch. D. 866; and *Spicer* v. *Martin*, 14 App. Cas. 12, into operation and to make restrictive covenants enforceable by one purchaser against another; see also *Reid* v. *Bickerstaff*, [1909] 2 Ch. 305; *Long* v. *Gray*, 58 Sol. J. 46. The covenantor need not covenant for himself and his assigns: see L. P. A. 1925, s. 79. The restrictive covenant should be registered as a land charge at the Land Registry or (if the property is in Yorkshire) in the Yorkshire Registry: see L. P. A. 1925, s. 198.

As to the form of the covenant, see L. P. A. 1925, ss. 78 and 79.

or more than —— feet in height, on the sides of the said plot of land abutting on any road as shown in the said plan, and also on the —— side thereof, so as to separate and effectually fence off the said plot of land as well from the adjoining plots of land in the said —— estate as from any such road as aforesaid.

To build a dwelling-house.

2. To erect and build upon the said plot of land, within —— calendar months from the date hereof, at his own cost, and under the inspection and to the satisfaction of the architect or surveyor for the time being of the vendor, in a good, substantial, and workmanlike manner, one messuage or dwelling-house, of the cost of £—— at the least [*add any stipulations as to the materials to be used, or other matters in connection with the building of the dwelling-house, that may be agreed upon*].

Fence and house to be in accordance with plan.

3. That the fencing to be erected as aforesaid between the said plot of land and any such road as aforesaid, and also the messuage to be erected thereon as aforesaid, shall be designed, erected, and completed in accordance with a uniform plan and elevation approved of by the vendor.

As to frontage.

4. To keep the front wall of such messuage or dwelling-house aligned and even with the building line marked upon the said plan, and to permit no portion of such messuage or dwelling-house to project beyond the said building line.

Not to build except as aforesaid.

5. Not to erect upon the said plot of land any building of any nature, whether temporary or permanent, except such one messuage or dwelling-house as aforesaid.

To use house as a private dwelling-house only.

6. To use such messuage or dwelling-house so to be erected upon the said plot of land, as and for a private dwelling-house only, and not for the purpose of any trade, business, or profession, of any kind whatsoever, or any purpose of the nature thereof or having the appearance thereof.

To repair and maintain roads.

7. To repair and maintain or pay the cost of repairing and maintaining one-half of so much of each of the roads or ways which adjoin the said plot of land as is co-extensive with the frontage thereof in such road or way, to the intent that the same may for ever hereafter be properly repaired, pitched, and paved, and kept in a proper state and condition.

Covenants by vendor.

And the vendor hereby covenants with the purchaser in manner following, that is to say:—

To make roads.

1. That he will, before the —— day of ——, 19—, make and

XLVII. OF FREEHOLD PLOT OF LAND SUBJECT TO BUILDING COVENANTS.

complete in a proper and workmanlike manner the roads and ways shown upon the said plan of the said —— estate, and thereon designated by the names of the —— Drive and the —— Road respectively (which roads are or will be more particularly convenient for the user and enjoyment of the said plot of land), and will lay down and finish, in manner aforesaid, gravel paths or sidewalks on both sides of the said roads or ways.

Not to permit trades, &c. to be carried on on other lots.

2. That he will not permit or suffer any trade, manufacture, or business or anything in the nature or having the appearance thereof to be exercised or carried on upon any plot of land on the said —— estate, or permit or suffer anything to be done or performed thereon which may be or grow to be a nuisance to the purchaser or his assigns; save and except that the vendor may permit one hotel, tavern, or other place for the sale of intoxicating liquors, and no more, to be erected upon any one, or more, if adjacent to one another, of the plots of land on the said —— estate, numbered ——, ——, and —— upon the plan of the said —— estate, a portion whereof is endorsed upon these presents.

Proviso as to variation of restrictions as to other lots.

PROVIDED ALWAYS, and it is hereby agreed and declared by and between the parties hereto, that it shall be lawful for the vendor, notwithstanding anything herein contained to the contrary, in the case of any purchaser of any other plot or plots of land upon the said —— estate, to vary or dispense with any or all of the restrictions and conditions herein contained (with the exception of those relating to the cost of repairing any road or roads on the said —— estate, or the covenant on the part of the vendor not to permit any building upon the said —— estate to be used as or for an hotel, tavern, beerhouse, or place for the sale of any intoxicating liquor, except upon the plots herein specified in that behalf), without thereby releasing the purchaser from any of the said restrictions and conditions on his part herein contained, or giving to the purchaser any right to bring any action against him the vendor or any purchaser of any plot of land in respect whereof any of the said restrictions and conditions may have been altered or dispensed with, on the ground of such alteration and dispensation: PROVIDED ALSO, and it is hereby agreed and declared, that

Proviso for re-entry (*k*).

(*k*) This proviso will not be required as a rule. It is only for enforcing the positive covenant to build and fence. The restrictive covenants run with the land, and the registration of them as a land charge will fix every future purchaser with notice of them.

[*Proviso for re-entry on breach of purchaser's covenants, ut ante, p.* 438, *with the proviso restricting such re-entry as to avoid perpetuity*]; And the vendor acknowledges, &c. [*Acknowledgment and undertaking as to title deeds,* ante, *p.* 361.]

Acknowledgment as to title deeds.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

In witness, &c.

The Schedule above referred to.

[*Deeds and documents of title.*]

XLVIII. CONVEYANCE *of a* Plot *of* Land *by a* Building Society subject *to* Restrictive Covenants, *the* Covenants being contained *in an* Independent Deed executed *by the* Purchaser.

THIS CONVEYANCE (*l*) is made the —— day of ——, 19—, Between The —— Land Society, Limited (hereinafter referred to as "the Society"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: Whereas the Society being the owner in fee simple of an estate known as the —— estate, situate at ——, near ——, in the county of ——, has laid out the same for building purposes, and has divided it (exclusive of the projected roads) into —— lots; And whereas the Society has agreed with the purchaser for the sale to him of the fee simple of the hereditaments hereby conveyed (being lot —) of the said estate; And whereas it was one of the conditions of the said sale that the purchaser should enter into certain covenants contained in a deed of covenant, dated the —— day of ——, 19—, and expressed to be made between the several persons whose names are subscribed and seals affixed thereto in the Second Schedule thereto of the one part, and the Society of the other part, and that the purchaser should execute the said deed of covenant (which deed has been, or is intended to be executed by any purchaser of any lot or lots of the said —— estate, to the end and intent that all the purchasers of any lot or

Parties.

Recitals: of ownership of society;

of agreement for sale;

of agreement as to deed of covenants.

(*l*) Stamp, *ad valorem.*

XLVIII. OF FREEHOLD PLOT OF LAND FOR BUILDING PURPOSES, SUBJECT TO COVENANTS IN SEPARATE DEED.

lots of the said —— estate may be mutually bound by and subject to the restrictions, duties, and liabilities therein contained), which the purchaser has agreed to do: NOW THESE PRESENTS WITNESS that, in consideration of the premises (*m*), and of the sum of £—— paid to the Society by the purchaser (the receipt whereof is hereby acknowledged), the Society hereby, as beneficial owner, grants unto the purchaser, ALL THAT, &c. [*parcels*]; TOGETHER WITH [*any right of way to which the purchaser may be entitled*]; TO HOLD the same unto the purchaser in fee simple, SUBJECT to the performance and observance of all and every the restrictions, duties, and liabilities imposed upon him by virtue of the said deed of covenant so executed by him as aforesaid.

Testatum.

Conveyance.

Habendum.

Subject to deed of covenant.

[*Acknowledgment and undertaking as to deeds and documents,* ante, *p.* 361.]

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

XLIX. DEED OF COVENANTS *between* VENDORS *and* PURCHASERS *of* LOTS LAID OUT *for* BUILDING PURPOSES (*to accompany the last Precedent* (*n*)).

Parties

THIS DEED OF COVENANT (*o*), dated the —— day of ——, 19—, is made BETWEEN the several persons whose names are given in the second column of the second schedule hereto, and whose signatures are subscribed and seals affixed hereto in the fourth column of the same schedule (and who are hereinafter referred to as "the purchasers," and each, or any, or one of whom is referred to as "the purchaser," or as "a purchaser"), of the one part, and the —— Land Society, Limited (hereinafter referred to as "the society"), of the other part: WHEREAS the said society,

Recitals:

(*m*) *I.e.*, the undertaking of the purchaser to execute the deed of covenant.

(*n*) Notice of this deed should be endorsed on a common title deed retained by the vendors. This deed should be registered as a land charge against every covenantor.

Stamp.

(*o*) Stamp, 10*s*.

being the owner in fee simple of an estate known as the —— estate, situate at ——, in the county of ——, delineated in the plan annexed to these presents and marked "A.," and sealed with the common seal of the said society, and therein coloured in part pink and in part green, has laid out the same under a building scheme, and for that purpose has divided the same (exclusive of the projected roads coloured brown on the said plan) into —— lots or thereabouts, which several lots are distinguished on the said plan by consecutive numbers from 1 to ——, both inclusive: AND WHEREAS each of the purchasers has recently purchased from the society such one or more of the said lots as is or are mentioned and placed opposite to his name in the first column of the second schedule hereto (being respectively the same as the lots and corresponding numbers shown in the said plan hereto annexed): AND WHEREAS, upon the treaties for the said respective sales, it was agreed that each purchaser, his heirs and assigns, should observe and perform and have the benefit of the several stipulations set forth in the first schedule hereto, so far as the same are applicable to the lot or lots purchased by him, and should execute these presents: NOW THESE PRESENTS WITNESS as follows:—

of laying out land in building plots (*p*);

as to identification of lots in schedule and plan.

Testatum.

1. In pursuance of the said agreement, and in consideration of the premises, each of the purchasers doth hereby covenant with the others, and separately with every two and more of the others, and separately with each one of the others of the purchasers, and also separately with the society, at all times hereafter to observe and perform all and every the conditions and stipulations set forth in the first schedule hereto, if and so far as the same conditions and stipulations are applicable to the lot or lots purchased by him and remain to be observed and performed.

Covenants by purchasers with each other and with vendors (*q*).

To observe stipulations in First Schedule.

2. The society hereby covenants with each of the purchasers that the society and its assigns will observe such of the said conditions and stipulations set forth in the first schedule hereto as do not involve the expenditure of money and are applicable to the

(*q*) It is not necessary that the covenantors should covenant for their assigns: see L. P. A. 1925, s. 79. The covenant will be deemed to be made with each covenantee or his successors in title: L. P. A. 1925, s. 78.

XLIX. DEED OF BUILDING COVENANTS.

unsold lots [and the roads coloured brown on the said plan]: And further, that every subsequent purchaser of any unsold lot or lots shall execute this indenture as a party thereto of the second part.

Interpretation clause.

3. It is hereby mutually agreed and declared, that in the first schedule hereto (unless and except where such interpretation is inconsistent with the context) the words "the plan" shall mean the plan annexed to these presents; and the words "the property" shall mean the said "—— estate," or, as the context may require, the same estate exclusive of the projected roads shown on the said plan; the word "purchaser" shall mean or include "the person whose name is subscribed and seal affixed to these presents in the second schedule hereto"; and the words "any lot sold at the present sale" shall mean or include any lot in the first column of the second schedule hereto, opposite to which the name of a purchaser is subscribed in the fourth column of the same schedule.

Arbitration clause.

4. In case any dispute or difference shall arise between the purchasers, or any of them, on the one hand, and the society, on the other hand, touching these presents, or anything herein contained, or the construction or operation hereof, or the rights, duties, or liabilities of any party in connection with the premises, then in every such case the matter in dispute or difference shall be referred to two arbitrators (one to be appointed by each party to the reference), or their umpire, and this shall be deemed to be a submission to arbitration within the Arbitration Act, 1889, or any statutory modification or re-enactment thereof for the time being subsisting, the provisions whereof shall, as far as may be, apply.

In witness whereof the said purchasers have hereunto set their hands and seals respectively in the second schedule, and in the fourth column thereof, opposite to the lots purchased by them respectively, on the days set opposite to their respective names in the third column of the same schedule, and the society has hereunto affixed its seal, countersigned by the secretary on the day and year first above written.

The First Schedule above referred to.

[*Restrictive stipulations and conditions.*]

THE SECOND SCHEDULE ABOVE REFERRED TO.

No. of Lot.	Purchaser's Name.	Date of Execution by Purchaser.	Purchaser's Signature and Seal.	Witness.

L. CONVEYANCE *of* REMAINDER *in* FEE *under* SETTLEMENT *prior to* 1926 *to* TENANT *for* LIFE, *the* TENANT *for* LIFE COVENANTING *to* PAY DEATH DUTIES.

THIS CONVEYANCE (*r*) is made the —— day of ——, 19—, BETWEEN [*remainderman*], of, &c. (hereinafter called "the vendor"), of the one part, and [*tenant for life*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS by an indenture of settlement, dated, &c., and made, &c., the hereditaments therein described were limited and assured to the use of the purchaser and his assigns during his life, with remainder to the use of the vendor, his heirs and assigns; AND WHEREAS by a vesting deed dated, &c., and made, &c., it was declared that the hereditaments and premises therein described (being the hereditaments then comprised in and subject to the said settlement) were vested in the purchaser [as to freehold hereditaments] in fee simple [and as to leasehold hereditaments for the residue of the terms of years for which the same respectively were holden], and that the purchaser should stand possessed thereof upon the trusts and subject to the powers and provisions upon and subject to which, under the said settlement, or otherwise, the same ought to be held, and that the said —— and —— were the trustees of the said settlement for the purposes of the Settled Land Act, 1925 [AND WHEREAS there are now standing in the names of the said trustees certain investments representing capital moneys arising under the Settled Land Acts, 1882 to 1890, or the Settled Land Act, 1925, from the hereditaments comprised in the settle-

Parties.

Recitals: of title of parties;

of vesting deed;

of agreement for purchase of remainder;

(*r*) Stamp, *ad valorem*.

L. OF REMAINDER IN FEE TO TENANT FOR LIFE.

ment]; AND WHEREAS the purchaser has agreed to purchase the equitable estate and interest of the vendor in remainder expectant on the decease of the purchaser in all the hereditaments and property now comprised in or subject to the settlement, at the price of £——; AND WHEREAS upon the treaty for the said sale it was agreed that the purchaser should enter into the covenant in respect of death duties hereinafter contained; NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— paid by the purchaser to the vendor (the receipt whereof is hereby acknowledged), the vendor, as beneficial owner, hereby grants and releases unto the purchaser, ALL the freehold [*and leasehold*] lands and hereditaments [and all the capital moneys or investments representing capital moneys] now comprised in or subject to the said settlement, whether under the said settlement or by any subsequent conveyance or subsidiary vesting deed, or otherwise howsoever, TO HOLD the same unto the purchaser in equitable fee simple, subject to the equitable estate for life of the purchaser therein (*s*) [to the intent that the said equitable estate for life may become merged and extinguished and the purchaser may be entitled henceforth in equity in fee simple in possession]; AND the purchaser hereby covenants with the vendor to pay and discharge any duty or duties which may become payable in respect of the premises hereby conveyed upon the death of him, the purchaser, as and when such duty shall become payable, and to keep effectually indemnified the vendor, his executors and administrators, against such duty or duties, and every part thereof, and all actions, proceedings, costs, charges, claims, and demands whatsoever for or on account of the same (*t*).

and as to death duties.

Testatum.

Conveyance.

Parcels.

Habendum.

Covenant for payment of death duties.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c. (*tt*).

(*s*) Omit the proviso as to merger where there are intermediate limitations or charges under the settlement, or where the life estate is incumbered, or where for any other reason merger is not to take place.

(*t*) This covenant does not seem to be strictly necessary, as it is the general rule that on the sale of a reversionary interest the payment of duty on its falling into possession is payable by the purchaser, in the absence of stipulation to the contrary.

(*tt*) Notice to be given to the trustees of the settlement or to the trust corporation (if any) appointed to receive notices under L. P. A. 1925, s. 138.

LI. CONVEYANCE *of a* REMAINDER *in* FEE *under a* SETTLEMENT *made prior to* 1926 *to a* PURCHASER (*u*).

LI. OF REMAINDER IN FEE TO A PURCHASER.

THIS CONVEYANCE (*x*) is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS under an indenture dated, &c., and made, &c., the vendor at the commencement of the Settled Land Act, 1925, was seised of the hereditaments hereby assured in fee simple expectant on the death of [*tenant for life*], of, &c., free from incumbrances: AND WHEREAS by a vesting deed dated, &c., and made, &c., it was declared that the hereditaments therein described, being the hereditaments hereby assured, were vested in the [*tenant for life*] in fee simple upon the trusts on which the same ought to be held under the settlement therein mentioned (being the said indenture of the —— day of ——), and that the said [*trustee*] and [*trustee*] were the trustees of the said settlement for the purposes of the Settled Land Act, 1925: AND WHEREAS the vendor has agreed with the purchaser for the sale to him for the sum of £—— of the equitable reversion in fee simple of him, the vendor, expectant, as aforesaid, of and in the said hereditaments, free from incumbrances: NOW THESE PRESENTS WITNESS that, in pursuance of the said agree-

Parties.

Recitals (*y*): of title of vendor;

of agreement for sale.

Testatum.

(*u*) The powers of the tenant for life, under the S. L. A. 1925, are incapable of being released; and, in the event of their being exercised by a sale, the purchaser of the remainder would have only an interest in the purchase-money, as capital money arising under the Act, and not in the land itself. Notice of the conveyance should be given to the trustees of the settlement. A purchase made *bonâ fide*, and without fraud or unfair dealing, of a reversionary interest in real or personal property cannot be opened or set aside merely on the ground of undervalue: see L. P. A. 1925, s. 174. As to "unconscionable bargains" on the sale of reversionary interests, see the notes to *Chesterfield* v. *Janssen*, White & Tudor's Leading Cases, vol. i.

(*x*) Stamp, *ad valorem*.

(*y*) If the remainder arose under a will, say:

"WHEREAS under the will dated the —— day of ——, and proved on the —— day of ——, of ——, who died on the —— day of ——."

and refer to the will instead of to the settlement throughout, and if there has been a vesting assent and not a vesting deed, recite the vesting assent instead of the vesting deed.

LI. ON REMAINDER IN FEE TO A PURCHASER.

ment, and in consideration of the sum of £—— now paid by the purchaser to the vendor (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the purchaser, ALL THOSE, &c. [*describe parcels*] (*z*): TO HOLD the same unto the purchaser in equitable fee simple, subject to the equitable life estate of the said [*tenant for life*] and to the duties (if any) to become payable on the death of the said [*tenant for life*], and to any charges or powers of charging subsisting under the said indenture of the —— day of ——.

Covenant by purchaser to pay death duties.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c. (*a*).

LII. SURRENDER *of an* ESTATE *for* LIFE *in* POSSESSION *in* FREEHOLDS *under a* SETTLEMENT *or* WILL *prior to* 1926 *to a* REMAINDERMAN (*b*).

Parties.

THIS CONVEYANCE (*c*) is made the —— day of ——, 19—, BETWEEN [*tenant for life*], of, &c., of the one part, and [*remaindeman*], of, &c., of the other part: WHEREAS [*recite will or settlement, whereby the hereditaments dealt with were devised to or were settled to the use of the tenant for life with remainder to the remainderman in fee simple (and in the case of a will), the death of the testator, the probate, and the assent of the executors to the devise, and where necessary the failure or determination of any intermediate limitations*]: AND WHEREAS by a vesting deed dated, &c., and made, &c., it was declared that the hereditaments therein described (being the hereditaments hereby surrendered) were vested in the [*tenant for life*] in fee simple upon the trusts on which the same ought to be held under the hereinbefore recited

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(*z*) In this case (the purchaser not being a beneficiary) it will be better to have as full a description as possible of the property.

(*a*) Notice to be given to the trustees of the settlement or to the trust corporation (if any) appointed to receive notices under L. P. A. 1925, s. 138.

(*b*) If the settlement or will was dated or took effect after 1925 this form can be used, substituting for the recitals in the text the recitals in the next following precedent.

(*c*) Stamp, *ad valorem*. As to notice, see note (*a*), above.

LII. SURRENDER OF LIFE ESTATE IN FREEHOLDS TO REMAINDERMAN.

[will, *or*, settlement] (*d*): AND WHEREAS the said [*remainderman*] has contracted with the said [*tenant for life*] for the purchase of his equitable estate for life in the hereditaments hereinafter surrendered, at the price of £——. NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the said [*remainderman*] to the said [*tenant for life*] (the receipt whereof is hereby acknowledged), the said [*tenant for life*] hereby, as beneficial owner, grants and surrenders unto the said [*remainderman*], ALL THAT [*parcels*] (*e*): TO HOLD all the premises unto the said [*remainderman*] in equity during the life of the said [*tenant for life*]: To the intent that the estate of the said [*tenant for life*] may be merged and extinguished in the ultimate remainder and inheritance in fee of the premises hereby surrendered: AND the said [*tenant for life*] hereby covenants with the said [*remainderman*] that he, or his personal representatives, will pay all estate duty (if any) which may become payable in respect of the said hereditaments on his death, and will keep the said [*remainderman*], and his successors in title, indemnified against the same and against all claims and demands in respect thereof (*f*).

Contract for purchase.

Testatum.

Surrender.

Parcels.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

LIII. CONVEYANCE *of a* REMAINDER *in* FEE *under a* SETTLEMENT *or* WILL *taking* EFFECT *after* 1925 *in* LAND *and* CAPITAL MONEY.

THIS CONVEYANCE (*g*) is made the —— day of ——, BETWEEN [*remainderman*], of, &c., of the one part, and [*pur-*

Parties.

(*d*) In the case of a will where the testator died after 1897, and there was no assent prior to 1st January, 1926, a vesting conveyance or vesting assent by the personal representatives of the testator would be substituted for the vesting deed, and the recital as to the vesting deed would have to be modified accordingly.

(*e*) The parties being beneficiaries, the parcels can be described by reference to the settlement if desired.

(*f*) If the tenant for life dies within three years estate duty will be payable on his death: see Finance Act, 1900, s. 11, and Finance (1909-10) Act, 1910, s. 9 (1).

(*g*) Stamp, *ad valorem*.

LIII. OF REMAINDER IN FEE UNDER AN INSTRUMENT SUBSEQUENT TO 1925.

chaser], of, &c. (hereinafter called "the purchaser"), of the other part.

Recitals: Land.

WHEREAS under or by virtue of the instruments mentioned in the first schedule hereto [*and in the events which have happened*] the hereditaments described in the second schedule hereto (*h*) are vested in [*tenant for life*], of, &c., as to freehold hereditaments in fee simple, and as to leasehold hereditaments for the residue of the terms of years for which the same respectively are holden upon trust for the said [*tenant for life*] during his life, with remainder upon trust for the said [*remainderman*] in fee simple: AND WHEREAS there are now standing in the names of [*trustee*] and [*trustee*], as the present trustees of the trust instrument [*or*, will] mentioned in the first schedule hereto, the moneys and investments mentioned in the third schedule hereto which represent capital moneys arising under the Settled Land Act, 1925 [*or*, which under the said trust instrument [*or*, will], are liable to be laid out in the purchase of land to be conveyed and settled upon the trusts aforesaid]: AND WHEREAS the said [*remainderman*] has agreed to sell to the purchaser, at the price of £——, his equitable remainder in fee under the aforesaid settlement, subject to the equitable life interest of the said [*tenant for life*] and to all charges and powers of charging subsisting under the said settlement, and to all death duties which may become payable on the death of the said [*tenant for life*]: NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— paid to the said [*remainderman*] by the purchaser (the receipt of which is hereby acknowledged), the said [*remainderman*], as beneficial owner, hereby grants to the purchaser, first, ALL the freehold hereditaments described in the first part of the second schedule hereto, and all other (if any) the freehold hereditaments which under any subsidiary vesting deed, or otherwise, are, or may become subject in equity to the said trust instrument; and secondly, ALL the leasehold hereditaments described in the second part of the second schedule hereto, and all other (if any) the leasehold hereditaments which under any subsidiary vesting deed, or otherwise, now are, or may become subject in equity to the said trust instrument; and thirdly, ALL the capital moneys and investments mentioned in the third

Capital money.

Agreement for sale.

Testatum.

Conveyance.

(*h*) The property should be described as fully as possible.

LIII. OF REMAINDER IN FEE UNDER AN INSTRUMENT SUBSEQUENT TO 1925.

schedule hereto, and all other (if any) the capital moneys and investments now held, or which ought to be held, upon the trusts of the said trust instrument; To HOLD all the premises unto the purchaser in equity as to freehold hereditaments in fee simple, and as to leasehold hereditaments for all the residue of the terms of years for which the same are held respectively, and as to capital moneys and investments absolutely subject as to all the premises to the equitable life interest therein of the said [*tenant for life*], and to any duties which may become payable on his death, and to all charges or powers of charging subsisting under the aforesaid settlement.

Habendum.

IN WITNESS, &c. (*i*).

THE FIRST SCHEDULE ABOVE REFERRED TO.

1. A vesting deed dated the —— day of ——, and made between ——.

[*Add subsidiary vesting deeds, if any.*]

2. A trust instrument dated the —— day of ——, and made between ——.

Or,

1. The will dated the —— day of ——, and proved on the —— day of ——, of ——, who died on the —— day of ——.

2. A vesting assent under the hands and seals of ——, the executors by whom the said will was proved.

[*Add subsidiary vesting deeds, if any.*]

[*Add a short statement of any deaths or other facts material to the title of the remainderman.*]

THE SECOND SCHEDULE ABOVE REFERRED TO.

PART I.

[*Describe the settled freeholds.*]

PART II.

[*Describe the settled leaseholds.*]

THE THIRD SCHEDULE ABOVE REFERRED TO.

[*Set out the capital moneys and investments.*]

(*i*) Notice to be given to the trustees of the settlement or will or else to the trust corporation (if any) nominated to receive notices under sect. 138 of the L. P. A. 1925.

LIV. TO LESSEE OF FREEHOLD REVERSION.

LIV. CONVEYANCE *in* Fee *of* Freehold Reversion *to a* Lessee, pursuant *to an* Option *of* Purchasing contained *in the* Lease (*k*).

Parties.

THIS CONVEYANCE (*l*) is made the —— day of ——, 19—, Between [*lessor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchasing lessee*], of, &c. (hereinafter called "the purchaser"), of the other part: Whereas at the date of the indenture of lease next hereinafter recited, the vendor was seised of the said hereditaments hereinafter described and hereby conveyed for an estate in fee simple in possession, free from incumbrances: And whereas by a lease, dated, &c., and made between the vendor of the one part, and the purchaser of the other part, the vendor demised, All that messuage, &c. [*describe parcels fully from the lease*], unto the purchaser from the —— day of ——, 19—, for the term of —— years, at the yearly rent of £—— thereby reserved and subject to the covenants on the part of the lessee and conditions therein contained; And in the lease now in recital was contained a proviso that if the purchaser should, before the —— day of ——, 19—, give to the person or persons for the time being entitled to the rents and profits of the hereditaments comprised in the same indenture —— calendar months' notice in writing of his desire to purchase the freehold reversion in such hereditaments expectant on the determination of the said term, then the vendor and all other necessary parties (if any) would,

Recitals: of vendor's seisin subject to mortgage;

of lease.

Parcels.

Proviso giving lessee option to purchase reversion:

(*k*) This conveyance may, if desired, be made by an indenture supplemental to the lease; if so, add, after the description of the parties, the words:—

"And supplemental to an indenture of lease, dated, &c., and made, &c. (hereinafter referred to as "the principal indenture"), whereby a messuage and hereditaments at ——, in the county of ——, therein particularly described, were demised unto the purchaser, from, &c., for the term, &c., at the rent thereby reserved and subject to the covenants, &c., therein contained, with an option to purchase the reversion as therein mentioned."

There will, in that case, be no need to recite the proviso as to purchase of the reversion, or to recite the lease, and the recitals will commence with the notice of intention to purchase and the lease will throughout be referred to as "the principal indenture."

(*l*) Stamp, *ad valorem*.

LIV. TO LESSEE OF FREEHOLD REVERSION.

on or before the expiration of such notice, and upon payment of the sum of £——, and of all rent accrued due up to the completion of such purchase, convey the premises comprised in the said lease unto the purchaser in fee simple in possession, free from incumbrances, or as he should direct; AND WHEREAS the purchaser, in pursuance of the proviso in that behalf contained in the said lease, has recently given to the vendor notice in writing under his hand declaring his desire to purchase the freehold reversion of and in the hereditaments comprised in the said lease expectant on the determination of the said term, and requiring the vendor to convey the same hereditaments accordingly in manner hereinafter appearing: AND WHEREAS the purchaser has duly paid all rent accrued due under the said lease up to the date of these presents, as the vendor doth hereby acknowledge: NOW THESE PRESENTS WITNESS that, in pursuance of the proviso in this behalf contained in the said lease, and in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the purchaser, ALL THAT and those the messuage and hereditaments comprised in the said lease, and therein described, TO HOLD all the premises unto the purchaser in fee simple, SUBJECT to the said term of —— years granted by the said lease, to the intent that the same term may henceforth merge and be extinguished.

of notice by lessee of intention to purchase;

of payment of rent due.

Testatum.

Conveyance of freehold reversion.

Parcels.

Habendum, subject to term to be merged in the fee simple.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

LV. CONVEYANCE *by* EXECUTORS *in* EXECUTION *of a* CONTRACT *for* SALE *by their* TESTATOR.

THIS CONVEYANCE (*m*) is made the —— day of ——, 19—, BETWEEN [*executor*], of, &c., and [*executor*], of, &c., of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS [*testator*], of, &c., being seised for an estate in fee simple in possession of the hereditaments hereinafter conveyed, entered into a contract in writing with the purchaser for the sale to him of the fee simple, free from incum-

Parties.

Recitals: of contract for sale;

(*m*) Stamp, *ad valorem*.

LV. BY EXECUTORS PURSUANT TO TESTATOR'S CONTRACT.

brances, of the hereditaments hereinafter conveyed, at the price of £——; [AND WHEREAS the title was accepted by the purchaser (*n*)]; but the said contract remains unexecuted and unperformed, the said purchase-money of £—— not having been paid, nor any conveyance of the said hereditaments made or executed; AND WHEREAS the said [*testator*] by his will, dated, &c., appointed the said [*executors*] to be the executors thereof; AND WHEREAS the said [*testator*] died on the —— day of ——, and his said will was proved on the —— day of ——, by the said [*executors*], in the Principal Probate Registry; AND WHEREAS the purchaser has requested the said [*executors*] to carry into effect the said contract, by conveying and assuring the said hereditaments, in manner hereinafter mentioned. NOW THESE PRESENTS WITNESS that, in pursuance of the said contract, and in consideration of the sum of £—— paid to the said [*executors*] by the purchaser (the receipt whereof is hereby acknowledged), they, the said [*executors*] hereby, as personal representatives of the said [*testator*], grant unto the purchaser, ALL THAT [*parcels*], TO HOLD unto the purchaser in fee simple.

that contract was not executed in vendor's lifetime;

of purchaser's request for conveyance.

Testatum.

Conveyance.

Habendum.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

LVI. CONVEYANCE *on* SALE *of* FREEHOLDS *by* PERSONAL REPRESENTATIVES *under Land Transfer Act*, 1897, *or Administration of Estates Act*, 1925 (*o*).

THIS CONVEYANCE (*p*) is made the —— day of ——, 19—, BETWEEN [*personal representative*], of, &c., and [*personal representative*], of, &c. (hereinafter called "the personal representa-

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(*n*) Omit this part of this recital if the title was not accepted at the date of the vendor's death.

(*o*) Where the death occurred before 1926, see L. T. A. 1897, Part I. In that case the administrator's title relates back to the death: *In bonis Pryse*, [1904] P. 301; and the subsequent discovery of a will does not invalidate a sale by the administrator of a supposed intestate: see *Hewson* v. *Shelley*, [1914] 2 Ch. 13. Where the death occurred after 1925, see A. E. A. 1925, and more especially sects. 2 and 36 (8) and 37, and (as to administrators) sect. 33.

(*p*) Stamp, *ad valorem*.

tives "), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part.

WHEREAS [*testator*] died on the —— day of —— seised of the hereditaments hereby assured in fee simple, free from incumbrances, and having by his will, dated, &c., appointed the personal representatives executors thereof, by whom the said will was proved on the —— day of —— in the Principal Probate Registry [*or*, "and intestate, and letters of administration of his real and personal estate were granted to the personal representatives on the —— day of ——"].

AND WHEREAS the personal representatives have not given or made an assent or conveyance in respect of the legal estate in the hereditaments hereby assured as they hereby declare.

AND WHEREAS the personal representatives have agreed with the purchaser for the sale to him of the hereditaments hereby assured in fee simple in possession, free from incumbrances, for the sum of £——.

NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the purchaser to the personal representatives (the receipt whereof is hereby acknowledged), the personal representatives, as personal representatives of the said [*testator* or *intestate*], deceased, hereby grant unto the purchaser, ALL THAT, &c. [*describe parcels*], TO HOLD unto the purchaser in fee simple.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

LVII. CONVEYANCE *on* SALE *by the* COURT *in an* ADMINISTRATION ACTION *by* TRUSTEES *for* SALE.

THIS CONVEYANCE (*q*) is made the —— day of ——, 19—, BETWEEN [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the vendors"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS [*recite will of testator devising his real estate to the vendors in trust for sale and appointing them executors, and death of the testator and probate of his will*]: AND WHEREAS the said testator was at the time of his death seised of the hereditaments hereby

Parties.

Recitals: of infant's title;

seisin of testator;

(*q*) Stamp, *ad valorem*.

LVII. ON SALE BY COURT IN ADMINISTRATION ACTION.

assured for an estate in fee simple in possession, free from incumbrances: AND WHEREAS by an Order of the Chancery Division of the High Court of Justice, made by Mr. Justice, &c., on the —— day of ——, in an action entitled, *Re X.*, *A.* v. *B.*, 19—, No. —, for the administration of the estate of the said testator, it was ordered, among other things, that the real estate of the said testator should be sold; AND that the money to arise by such sale should be paid into Court, to the credit of the said action to the account of, &c.: AND WHEREAS, in pursuance of the said order, the said real estate was, on the —— day of ——, put up by the vendors for sale by public auction at —— in —— lots, free from incumbrances, according to certain printed particulars of sale, wherein lot — comprised the lands and hereditaments hereby conveyed; AND WHEREAS at the said sale the purchaser was the highest bidder for and was declared to be the purchaser of the said lot — at the price of £——; AND the purchaser thereupon paid to [*auctioneer*], the person appointed by the said judge to receive the same, the sum of £—— by way of deposit, and the same sum has since been paid by the said [*auctioneer*] into Court to the credit aforesaid; AND WHEREAS, on the —— day of ——, the result of the said sale was duly certified; AND WHEREAS by an order made on the —— day of —— in the said action, it was ordered that the purchaser should (*s*), on or before the —— day of ——, pay into Court to the credit aforesaid the sum of £—— [being the balance of the purchase-

of order for administration action;

of order for sale;

of sale by auction pursuant to order (*r*);

of purchase and payment of deposit;

of certificate of result of sale;

of order for payment of balance of purchase-money and interest, and for conveyance;

(*r*) If the sale was by private contract, say—

"AND WHEREAS the vendors to whom the conduct of the said sale was committed lately agreed with the purchaser, subject to the approval of the said judge being obtained, for the sale to the purchaser of the said hereditaments hereinafter described and hereby conveyed at the price of £——, and the purchaser thereupon paid to the vendors the sum of £—— by way of deposit, and the same sum his since been paid by the vendors into Court to the credit aforesaid."

The next following recital will be omitted.

(*s*) If the sale was by private contract, say—

"the said provisional contract was confirmed and ordered to be carried into effect, and it was further ordered that the purchaser," &c.

money of the lot so purchased by him as aforesaid after deducting the said sum of £—— so paid by way of deposit as aforesaid], together with interest on the said sum of £—— for interest thereon at the rate of —— per cent. per annum from the —— day of —— until payment of the same sum; AND it was further ordered that, upon such payment as aforesaid being made, the purchaser should be let into possession or into the receipt of the rents and profits of the said hereditaments as from the —— day of ——, 19—, and that the vendors should execute a proper conveyance of the said lands and hereditaments hereby conveyed unto the purchaser; AND WHEREAS, in pursuance of the last mentioned order, the purchaser, on the —— day of ——, paid into Court the sum of £—— [*balance of purchase-money*], and a further sum of £——, being interest thereon, to the credit aforesaid; AND WHEREAS the purchaser is desirous that the said lands and hereditaments should be conveyed to him in manner hereinafter appearing. NOW THESE PRESENTS WITNESS that, in pursuance of the hereinbefore recited orders, and in consideration of the said sums of £——, £——, and £——, making in the whole the sum of £—— so paid by the purchaser as hereinbefore is mentioned, and of the premises, the vendors, under the hereinbefore recited order of the Court of the —— day of ——, 19—, hereby as trustees, grant and convey unto the purchaser, ALL THAT [*describe parcels*], TO HOLD the same unto the purchaser in fee simple.

of payment of purchase-money, &c.

Testatum.

Conveyance.

Habendum.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

LVIII. ASSIGNMENT *of* LEASEHOLDS SOLD *in* LOTS *to* ONE *of the* PURCHASERS, *to the* INTENT *that* HE *may* GRANT UNDERLEASES *to the* OTHER PURCHASERS (*t*).

THIS CONVEYANCE (*u*) is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"),

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(*t*) This mode of conveyance is still used occasionally, and therefore this and the following precedent are retained in this edition. But a simpler and better method is for the vendor himself to give underleases

Conveyance of leasehold lots by assignment and underleases.

(*u*) Stamp, *ad valorem* on the amount of purchase-money paid by the assignee.

LVIII. ASSIGNMENT OF LEASEHOLDS TO PURCHASER OF LARGEST LOT, WHO IS TO GRANT UNDERLEASES.

of the one part, and [*purchaser*], of, &c. (hereinafter called "the assignee"), of the other part: WHEREAS [*recite lease describing the parcels from the lease, and mesne assignments, if any*]: AND WHEREAS the vendor has recently agreed with the assignee and the other persons whose names are mentioned in the [first] schedule hereto for the sale to them respectively of the messuages, lands, and premises comprised in the hereinbefore recited indenture of lease in the lots, subject to the apportioned rent, and at the prices respectively mentioned in the same schedule: AND WHEREAS, upon the treaty for the said sales, it was agreed that the assignee should take an assignment of the said premises comprised in the said lease, and should execute to the other purchasers such underleases as are hereinafter mentioned: NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement in this behalf, and in consideration of the sum of £—— paid to the vendor by the assignee (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, assigns unto the assignee, ALL THOSE the said messuages and pieces or parcels of land and premises comprised in and demised by the said lease, and particularly mentioned in the said [first] schedule hereto, To HOLD all the premises hereby assigned unto the assignee, for the unexpired residue of the said term of —— years, at the rent reserved by and subject to the covenants on the part of the lessee and conditions contained in the said lease, and henceforth to be paid, performed, and observed, As TO the premises comprised in lot 1 according to the description thereof contained in the said [first] schedule hereto, for the absolute use and benefit of the assignee; AND as to all the residue of the premises comprised in

Testatum.

Parcels.

Habendum.

As to lot 1 absolutely.

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to all the purchasers but one, and then assign the lease of the whole property to the remaining purchaser subject to and with the benefit of the underleases. The position of the purchaser taking the assignment of the lease (who is usually the purchaser of the largest or of the most valuable lot) is not altogether satisfactory, inasmuch as he becomes liable for the whole rent reserved by the lease, and in respect of the covenants and conditions of the lease as regards the whole property therein comprised. In this precedent, in order to protect him as far as possible, the apportioned rents of other purchasers are reserved to him, and covenants on their part are inserted in the underleases for payment of their respective apportioned rents and performance of the covenants, &c. of the lease so far as relates to their respective lots.

LVIII. ASSIGNMENT OF LEASEHOLDS TO PURCHASER OF LARGEST LOT, WHO IS TO GRANT UNDERLEASES.

As to residue.

In trust to grant underleases.

the said lease, other than the said premises so comprised in lot 1 as aforesaid, UPON TRUST at any time hereafter, upon the request of the vendor, to make and execute unto and at the cost of the respective purchasers mentioned in the said [first] schedule hereto other than the assignee, underleases of such parts of the premises comprised in the said lease as are comprised in the several lots set opposite to their respective names in the same schedule according to the description thereof respectively therein contained, to commence from the —— day of —— next, for the unexpired residue of the said term of —— years except the last day thereof, at the apportioned yearly rents respectively mentioned in the said [first] schedule hereto, and to commence respectively and be payable as from the said —— day of ——, such underleases to contain (*x*) all necessary covenants for payment of the said apportioned rents (*y*) mentioned in the same schedule respectively, and for the performance by the respective purchasers of the covenants on the part of the lessee and conditions contained in the said lease so far as such covenants and conditions relate to such parts of the premises comprised in the same lease as are purchased by the said purchasers respectively, and for indemnifying the assignee against the non-payment of the said apportioned rents respectively, and the breach, non-performance, or non-observance of the covenants and conditions of the said lease in respect of the parts of the said premises purchased by the said purchasers respectively, and also a power of entry by the assignee on non-payment of the said apportioned rents respectively, or on breach, non-performance, or non-observance of the covenants and conditions of the said lease, and all other necessary and proper covenants, powers, and provisions; AND in the meantime, and until such underleases shall be

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(*x*) Sometimes a form of the intended underleases is annexed to the deed of assignment, in which case say here:—

"Such underleases to be according to the form of an underlease set out in the second [*or*, third] schedule hereto, or as near thereto as the circumstances of each case will permit."

(*y*) The apportioned rents should be made payable half-yearly or quarterly as in the lease, and the dates fixed should be one or more days earlier than those fixed by the lease.

LVIII. ASSIGNMENT OF LEASEHOLDS TO PURCHASER OF LARGEST LOT, WHO IS TO GRANT UNDERLEASES.

made and executed as aforesaid, UPON TRUST for the vendor, subject nevertheless to the payment, performance, and observance by the vendor, of the apportioned rents, covenants, and conditions hereinafter mentioned, and covenanted to be paid, performed, and observed by him and them respectively; AND the assignee hereby covenants with the vendor to pay henceforth the rent reserved by the said lease, and observe and perform henceforth the lessee's covenants and the conditions contained in the said lease, and to indemnify the vendor against all actions, proceedings, costs, damages, expenses, claims, and demands in respect of any non-payment of the said rent, or any breach or non-performance or non-observance of the said covenants and conditions or any of them (*z*); PROVIDED ALWAYS, and the vendor hereby covenants with the purchaser, that until all such underleases as aforesaid shall have been made and executed, he the vendor will on demand pay to the purchaser, all and every sums or sum of money which he or they shall pay under the covenant lastly hereinbefore contained in respect of any apportioned rents in relation to the premises hereby assigned (other than the premises so comprised in lot 1 as aforesaid), or such parts or part of the same premises whereof no underleases or underlease shall for the time being have been made and executed as aforesaid; AND will keep indemnified the purchaser against all actions, proceedings, costs, charges, damages, and expenses, for or in respect of all and any such apportioned rents as last aforesaid, and for or in respect of any breach, non-performance, or non-observance of any of the covenants on the part of the lessee, and conditions contained in the said lease so far as the same respectively relate to the premises hereby assigned (other than the premises so comprised in lot 1 as aforesaid), or such parts or part of the same premises whereof no underleases or underlease shall for the time being have been made and executed; AND the purchaser hereby acknowledges the right of the vendor, until all such underleases as aforesaid shall have been made and executed, but not thereafter, to production of the said lease [and the other documents specified in the second schedule hereto], and to delivery of copies thereof, and he hereby under-

And meanwhile in trust for vendor.

Covenants by purchaser.

Covenants by vendor to pay apportioned rents of other lots until underleases are granted.

And for indemnity.

Acknowledgment, &c. as to documents of title until all underleases are granted.

(*z*) This express covenant is inserted *ex abundanti cautelâ* to prevent any question being raised as to whether in such a case as the present a covenant to this effect is implied under the L. P. A. 1925.

takes for the custody in the meanwhile thereof, the same being in his possession and retained by him.

LVIII. ASSIGNMENT OF LEASEHOLDS TO PURCHASER OF LARGEST LOT, WHO IS TO GRANT UNDERLEASES.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

THE [FIRST] SCHEDULE ABOVE REFERRED TO.

[*Description of Lot* 1.]

[THE SECOND SCHEDULE ABOVE REFERRED TO] (*a*).

LIX. UNDERLEASE *on* SALE *of* LEASEHOLDS *to the* PURCHASER *of* ONE *of the* LOTS *by the* PURCHASER *of* ANOTHER LOT *who has taken an* ASSIGNMENT *of the* LEASE [*to accompany the last preceding Precedent* (*b*)].

THIS UNDERLEASE (*c*) is made the —— day of ——, 19—, BETWEEN [*assignee of lease*], of, &c. (hereinafter called "the assignee"), of the first part; [*vendor*], of, &c. (hereinafter called "the vendor"), of the second part; and [*purchaser taking underlease*], of, &c. (hereinafter called "the purchaser"), of the third part: WHEREAS by a lease, dated, &c., and made, &c., the messuage and hereditaments hereby demised were, together with other hereditaments, demised unto, &c. [*continue*

Parties.

Recitals: of lease, &c.;

(*a*) Add a second or third schedule, if required, setting out the form of the underlease.

(*b*) See note (*t*) to last preceding precedent. Counterparts of the several underleases should be delivered to the assignee purchaser.

(*c*) If the rent reserved by this underlease is treated, as it is submitted it should be, merely as a means for carrying into effect the real transaction as intended between the parties, viz., the sale and assurance for a fixed sum of a portion of the premises comprised in the lease for the whole term, less a nominal reversion of one day, then the stamp on this deed should be *ad valorem* on the amount of the purchase-money without any further stamp; but it would be advisable to have the stamp adjudicated.

LIX. UNDERLEASE TO PURCHASER OF A LEASEHOLD LOT.

recital of lease, and recite mesne assignments, if any]; AND WHEREAS the vendor has recently agreed with the purchaser for the sale to him for the price of £—— of the said messuage and hereditaments hereinafter described at the apportioned rent of £——; AND WHEREAS upon the treaty for the said sale it was arranged that the assignee should take such an assignment from the vendor of the whole of the premises comprised in the said lease as is hereinafter mentioned, and should make and execute to the purchaser an underlease of the said messuage and hereditaments hereinafter described and hereby demised, being part of the said hereditaments comprised in the said lease and assignment respectively, at the said apportioned rent of £——, and subject to the covenants, conditions, and provisions hereinafter contained; AND it was then also agreed that the assignee should be entitled to retain all documents relating to the common title of the said hereditaments demised by the said lease, and should give to the purchaser such acknowledgment and undertaking in relation thereto as are hereinafter contained respectively: AND WHEREAS in pursuance of the said arrangement, by an assignment dated, &c., and made, &c., the whole of the said hereditaments comprised in the said lease have been assigned by the said vendor unto the assignee for the unexpired residue of the said term of —— years thereby granted, at the rent and subject to the covenants on the part of the lessee and conditions thereby and therein reserved and contained, but upon trust, among other things, to make and execute to the purchaser such underlease as aforesaid, being these presents. NOW THESE PRESENTS WITNESS as follows:—

of agreement for sale of lot to purchaser;

of agreement as to mode of conveyance;

and custody of documents of common title;

of execution of assignment of lease.

Testatum.

Demise.

1. In pursuance of the said agreement in this behalf, and in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the assignee, by the direction of the vendor, hereby demises, and the vendor hereby confirms unto the purchaser, ALL THAT messuage, &c. [*describe parcels*], being part of the said hereditaments comprised in the said lease, TO HOLD the premises hereby demised unto the purchaser, henceforth for all the unexpired residue of the said term of —— years granted by the said lease, except the last day thereof; YIELDING AND PAYING therefor unto the assignee yearly during the said term hereby granted, and so in proportion

Habendum: to purchaser for term of —— years less one day.

Reddendum: of apportioned rent.

LIX. UNDERLEASE TO PURCHASER OF A LEASEHOLD LOT.

for any less time than a year, the rent of £—— without any deduction (except for property tax) by equal quarterly payments on the —— day of ——, &c. (*d*), in every year; the first payment thereof to be made on the —— day of ——, 19—.

Covenants by purchaser of lot for payment of apportioned rent, and performance of covenants, &c. of lease.

2. The purchaser hereby, for himself, covenants with the assignee that he, the purchaser, will henceforth pay the said rent of £—— hereby reserved at the times and in manner hereinbefore appointed for payment thereof, and will perform and observe all the covenants by the lessee (except the covenant for payment of rent) and conditions contained in the said lease, so far as the same respectively relate to the said premises hereby demised, and will keep indemnified the assignee against all actions, proceedings, costs, damages, expenses, claims and demands for breach, non-performance, or non-observance of the said covenants (except as aforesaid) or any of them.

Power of entry.

3. PROVIDED ALWAYS, that if the said rent of £—— hereby reserved, or any part thereof, shall remain unpaid for twenty-one days after the same ought to be paid as aforesaid, whether any formal or legal demand thereof shall have been made or not, or if any of the covenants and agreements herein contained on the part of the purchaser shall not be by him or them performed and observed, then and in any such case it shall be lawful for the assignee, into and upon the premises hereby demised, or any part thereof, in the name of the whole, to re-enter and the same to have again and enjoy as if this demise had never been made, but without prejudice to any right of action or remedy of the assignee in respect of any previous breach of any covenant on the part of the purchaser herein contained.

Covenant for quiet enjoyment.

4. The assignee hereby covenants with the purchaser that he the purchaser, paying the said rent of £—— hereby reserved in manner aforesaid, and observing and performing all and singular the covenants, conditions, and agreements on his part to be performed and observed, shall and may peaceably and quietly hold and enjoy the premises hereby demised during the said term hereby granted, without any interruption or disturbance of or by the assignee, or any persons or person whomsoever claiming under or in trust for him.

(*d*) As to the days for payment, see note (*y*) to last preceding precedent.

LIX. UNDER-LEASE TO PURCHASER OF A LEASE-HOLD LOT.

5. The assignee hereby acknowledges the right of the purchaser to the production and delivery of copies of the said lease and the assignment thereof to the assignee [and other the documents mentioned in the schedule hereto], and hereby undertakes for the safe custody thereof.

Acknowledgment, &c. (*e*).

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

[THE SCHEDULE ABOVE REFERRED TO.]

LX. CONVEYANCE *in* FEE *on* SALE *of* GLEBE LAND *by a* RECTOR *with the* CONSENT *of the* PATRON *of the* BENEFICE, *and of the* ECCLESIASTICAL COMMISSIONERS (*f*).

Parties.

THIS CONVEYANCE (*g*) is made the —— day of ——, 19—, BETWEEN the Reverend [*rector*], clerk in holy orders, rector of

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(*e*) This acknowledgment, &c. should include the lease and the assignment thereof, and also any mesne assignments thereof by reference to a schedule. If there are no mesne assignments no schedule will be required.

Sale of glebe.

(*f*) By the Ecclesiastical Leasing Act, 1842, certain powers of leasing are given to ecclesiastical corporations, aggregate and sole, with the consent of the Ecclesiastical Commissioners. By the Ecclesiastical Leasing Act, 1858 (21 & 22 Vict. c. 57), s. 1, it is enacted that lands authorised to be leased by the Act of 1842, or any part thereof, may be sold by the incumbents or other ecclesiastical corporations to whom they belong with the consent of the Commissioners, three months' notice in writing of such proposed sale having been given to the bishop of the diocese. For the three months' notice required by the 1858 Act, the Glebe Lands Act, 1888, substitutes the notice prescribed by the rules under the latter Act: see (1897) W. N. Rules and Orders, p. 117. By sect. 2 of the 1858 Act, the purchase-money upon any such sale is to be paid to the Commissioners. And by the stat. 29 & 30 Vict. c. 111, s. 3, the three Church Estates Commissioners are to be joint treasurers of the Ecclesiastical Commissioners, and the receipt of any two of such treasurers, or any one of them, and of the accountant or assistant accountant of the Ecclesiastical Commissioners, is to be a good discharge to a purchaser. Glebe land may be sold with the sanction of the Board of Agriculture and Fisheries instead of the Ecclesiastical Commissioners under the Glebe Lands Act, 1888 (51 & 52 Vict. c. 20), but the powers of sale under the Ecclesiastical Leasing Acts are kept alive (see sect. 11 of the Glebe Lands Act, 1888), and the Act of 1888 does not apply (see sect. 5) to land subject to a lease for a term of more than twenty-one years or reserving a rent less than two-thirds the full value.

(*g*) Stamp, *ad valorem*.

LX. CONVEYANCE OF GLEBE LANDS.

the parish church of ——, in the county of —— (hereinafter called "the rector"), of the first part; [*patron*], of, &c., the present patron of the said rectory (hereinafter called "the patron"), of the second part; the Ecclesiastical Commissioners for England (hereinafter called "the Commissioners"), of the third part; and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the fourth part: WHEREAS the lands and hereditaments hereinafter described and hereby conveyed form part of the glebe lands belonging to the said rectory: AND WHEREAS the rector recently agreed with the purchaser for the sale to him, subject to the approval of the Commissioners being obtained, of the said lands and hereditaments in fee simple, free from incumbrances, for the price of £——: AND WHEREAS due notice of the intended sale was on the —— day of ——, 19—, duly given to the Right Reverend [*bishop*] Lord Bishop of ——: AND WHEREAS the patron and the Commissioners, being satisfied that the said intended sale will be to the permanent advantage of the said rectory and the incumbent thereof for the time being, have respectively agreed to concur in these presents in manner and for the purposes hereinafter appearing: NOW THESE PRESENTS WITNESS that, for effectuating the said sale, and in consideration of the sum of £—— paid by the purchaser, by the direction of the Commissioners, to their account at the Bank of England, the payment of which sum of £—— is intended to be acknowledged by a memorandum indorsed on these presents, and signed by [A.] and [B.], as two of the joint treasurers of the Commissioners, and the payment whereof the Commissioners hereby acknowledge, the rector, with the consent hereby testified, as well of the patron, as also of the Commissioners, doth hereby, in pursuance of the power or authority in this behalf given to him by the Ecclesiastical Leasing Acts, and of every other power or authority him hereunto enabling, grant unto the purchaser, ALL THOSE closes or parcels of land, &c. [*describe parcels*], TO HOLD the same unto the purchaser in fee simple, subject to all duties, payments, obligations, and outgoings, ecclesiastical and civil, charged upon or payable out of the said premises hereby assured, and to all easements (if any) affecting the same (*h*). [AND the rector hereby covenants with the purchaser that he the rector has

Recitals: that lands form part of glebe; of agreement for sale; of notice to bishop of intended sale; of agreement of patron and Commissioners to concur in conveyance.

Testatum.

Habendum.

(*h*) See *Re Alms Corn Charity*, [1901] 2 Ch. 750.

LX. CONVEYANCE OF GLEBE LANDS.

not at any time heretofore done or knowingly omitted or suffered or been party or privy to anything whereby or by means whereof the hereditaments and premises hereby granted, or any part thereof, are, is, or may be impeached, charged, incumbered, or affected in any manner whatsoever or whereby or by means whereof the rector is in anywise hindered from granting the same premises or any part thereof in manner aforesaid] (*i*).

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

LXI. CONVEYANCE *in* FEE *to* TRUSTEES *in* TRUST *for* PIOUS *or* CHARITABLE PURPOSES *in a* PARISH, *under* DIRECTION *of* RECTOR *and* CHURCHWARDENS *for time being* (*k*).

Parties.

THIS CONVEYANCE (*l*) is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*trustee*], of, &c., and [*trustee*], of, &c. (hereinafter called "the trustees"), of the other part:

Recital of agreement for purchase.

WHEREAS the trustees have agreed to purchase the hereditaments hereinafter described to the intent that the same may hereafter be used for the charitable purposes hereinafter expressed:

Testatum.

NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the trustees to the vendor (the receipt whereof is hereby acknow-

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(*i*) Incumbents selling glebe lands do not usually enter into full covenants for title, and as they are not trustees it seems that they should give express covenants against incumbrances, and not convey as trustees.

Conveyance of land for parochial purposes.

(*k*) A conveyance for parochial purposes may, if desired, be made to the churchwardens and overseers of the parish. This conveyance being for valuable consideration seems not to be within the Mortmain Acts, so far as regards the avoidance of the deed upon the death of the grantor within twelve months after the execution of the conveyance; but it must be sent to the Charity Commissioners to be recorded by them in their books (S. L. A. 1925, s. 29) within six calendar months after execution, unless the charitable uses are declared by deed (a proceeding which is not here contemplated), in which event the declaratory deed must be sent.

Enrolment.

(*l*) Stamp, *ad valorem*.

LXI. CONVEYANCE IN FEE TO TRUSTEES FOR PAROCHIAL PURPOSES.

Conveyance.

Parcels.

Habendum.

ledged), the vendor hereby, as beneficial owner, grants unto the trustees, ALL, &c. [*describe parcels*], TO HOLD all the premises unto the trustees in fee simple upon the trusts and for the purposes hereinafter declared, that is to say (*m*), upon trust from time to time to use and dispose thereof, and of every part thereof in such manner as from time to time the rector and churchwardens for the time being of the parish church of ——, in the county of ——, shall direct, so as that such directions shall be for the purposes, or some one or more of the purposes following, that is to say: First, in whole or in part, as a residence for the sexton, clerk, organist, curate, or any other officer or person employed in the services of the said parish church, for the time being; or secondly, by way of addition to the churchyard, to the intent that the same may be consecrated for the purposes to which the churchyard of the said parish church is already applicable; or thirdly, in any other manner which may, in the judgment of the said rector and churchwardens for the time being, be useful for any pious or charitable purposes, for the benefit of the inhabitants of the said parish of ——, or of some of them, and approved of by the said rector and churchwardens for the time being; AND IT IS HEREBY DECLARED that the power of appointing a new trustee or new trustees of these presents shall from time to time be exercisable by the rector and churchwardens for the time being of the said parish of ——.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

(*m*) Under sect. 29 of the S. L. A. 1925, the land will be settled land, and the trustees will have all the powers conferred by the Act on a tenant for life or on the trustees of a settlement. The trustees, however, are not constituted statutory owners, and therefore no vesting deed is required.

LXII. ASSIGNMENT, ETC. OF GOODWILL, ETC. OF BUSINESS.

LXII. ASSIGNMENT *of the* GOODWILL *and* PLANT *of a* TRADE *or* BUSINESS *in* CONSIDERATION *of a* SUM *of* MONEY *to be* PAID *by* INSTALMENTS, *with* APPROPRIATE COVENANTS (*n*).

Parties. THIS CONVEYANCE (*o*) is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the

Recital: purchaser"), of the other part: WHEREAS the vendor has for several years past carried on a trade and business as a ——, and is at the date hereof engaged in the same trade and business: AND

of vendor's trade: WHEREAS it has been agreed between the vendor and purchaser

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Leasehold premises. (*n*) This deed may, if desired, be made to include the assignment of any leasehold premises in which the business is carried on. In that case the recital of agreement for sale will mention the leaseholds among the property to be sold, and the assignment of the leaseholds and of any fixed machinery and fixtures will form the first operative part; or the leaseholds may be separately assigned by indorsement on the leases, or otherwise.

Stamp. (*o*) Subject to the following remarks, *ad valorem* stamp duty will be payable on the full amount of the purchase-money, including the extra 100*l.* payable if the profits in the first year exceed a certain sum, and, it would seem, on the amount of outstanding debts and liabilities of the business if taken over by the purchaser. And first, as to the goodwill. Goodwill is property within the meaning of the Stamp Act: see *Potter* v. *Commissioners of Inland Revenue,* 10 Exch. 147; and a conveyance of the goodwill requires an *ad valorem* stamp; *ad valorem* duty may, however, be saved by omitting all mention of the goodwill in the recitals and assignment, and reducing the amount of the consideration expressed to be paid accordingly, if the purchaser is content to rely on the vendor's covenants without taking an assignment of the goodwill. A further reduction in the amount of the *ad valorem* duty may be effected by omitting the movable machinery, plant, &c. from the assignment and transferring them by delivery, apportioning the purchase-money accordingly: as to which, see sect. 59 (1) of the Stamp Act, 1891. The delivery of the chattels should be recited so that this deed, so far as they are concerned, would apparently be a "memorandum made for or relating to the sale of goods, wares, or merchandise" within the exemption in the schedule to the Act: see *Horsfall* v. *Hey,* 2 Exch. 778; *Phillips* v. *Gibbons,* 5 W. R. 527.

LXII. ASSIGNMENT OF GOODWILL, ETC. OF BUSINESS.

that in consideration of the sum of 300*l.*, to be paid to the vendor by the purchaser at the time of the execution of these presents, and of the further sum of 250*l.* agreed to be paid to him by the purchaser on the —— day of ——, 19—, together with interest for the same after the rate of 5 per centum per annum in the meantime, to be paid by equal half-yearly payments on the —— day of —— and —— day of ——, 19—, and to be secured by the bond or obligation of the purchaser; AND ALSO of the like sum of 250*l.*, also agreed to be paid to the vendor by the purchaser on the —— day of ——, 19—, with interest for the same after the rate aforesaid in the meantime, to be paid on the —— day of —— and on the —— day of —— in each of the years 19— and 19—, and also to be secured by the said bond or obligation of the purchaser, and also in consideration of such further and contingent payment by the purchaser as is hereinafter mentioned, he, the vendor, shall sell, and the purchaser shall purchase, the goodwill of the trade and business of the vendor; TOGETHER with the machinery, plant, utensils, manufactured and unmanufactured goods, and materials and stock-in-trade used in the said trade or business, and now the property of the vendor, and specified in the first schedule hereto, and the book debts owing to the vendor, the particulars whereof are specified in the second schedule hereto, and the benefit of all contracts and orders which the vendor has entered into for the supply of goods manufactured or sold by him [subject to the purchaser taking over the whole of the debts and liabilities of the said business outstanding on the —— day of —— as shown by the books of the said business]: NOW THESE PRESENTS WITNESS that, in consideration of the sum of 300*l.* now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), and also in consideration of the further sums of 250*l.* and 250*l.*, and interest thereon respectively, agreed to be paid to the vendor by the purchaser at the times and in manner hereinbefore mentioned, and to be secured by the bond of the purchaser, bearing even date herewith, as the vendor doth hereby admit; AND ALSO, in consideration of the covenant on the part of the purchaser hereinafter contained, he, the vendor, hereby, as beneficial owner, assigns unto the purchaser, ALL THAT the before mentioned trade or business of a —— of him the vendor, and the goodwill thereof,

contract for sale in consideration of money to be paid by instalments, and secured by bond.

Testatum.

In consideration of money paid, and future instalments secured by bond,

vendor assigns trade.

LXII. ASSIGNMENT OF GOODWILL, ETC. OF BUSINESS.

and all benefit and advantage thereof; AND ALSO all the said machinery, plant, utensils, goods and materials, stock-in-trade, chattels and effects, and book debts and also all the interest of him the vendor in the said contracts or orders (*p*): TO HAVE, receive, and enjoy all the said premises, unto, and by the purchaser, absolutely: AND the vendor hereby covenants with the purchaser that he, the vendor, will, by writing and circulating letters, and by personal introduction and other practicable means, use and exercise his best endeavours to introduce the purchaser to, and procure for him the custom of, all the present and late customers and friends who have been in the habit of employing and dealing with him, the vendor, in his said trade or business; AND ALSO will, forthwith or within —— from the date hereof, deliver unto the purchaser a written list of the present and former customers of, and dealers with him, the vendor; AND ALSO that he, the

Habendum.

Vendor covenants to introduce purchaser to customers;

to deliver list of customers;

not to carry on trade

(*p*) Add, if required—

Apprentices.

"AND ALSO all the benefit of the services of all and every such persons as now are the apprentices of the vendor, for and during such term, respectively, as each such respective apprentice by his indenture of apprenticeship is obliged to serve; the purchaser hereby undertaking for himself, his executors and administrators, during such service, to carry out in all respects the terms of any subsisting deed or deeds of apprenticeship as if the purchaser's name had been inserted therein instead of the name of the vendor."

Power of attorney.

The purchaser should, if possible, protect himself by giving notice of this assignment to the persons interested in the contracts and orders, and also to the persons from whom the book debts are owing. If this is done no power of attorney will be necessary. Otherwise a power of attorney should be here added, which may be as follows:—

"TOGETHER with full power in the name of the vendor, his executors or administrators, or otherwise, to sue for, demand, recover, enforce, and receive payment of, and give effectual receipts or discharges for, all or any of the said book debts and any moneys, damages, costs, charges, and expenses, which may become recoverable or payable in relation to all or any of the said contracts or orders."

As to the assignment of contracts, see *Tolhurst* v. *Associated Portland, &c., Ltd.*, [1903] A. C. 414; *Kemp* v. *Baerselman*, [1906] 2 K. B. 604.

vendor, or his wife or widow (*q*), will not, at any time or period within —— years from the date hereof, or within —— miles of the city of London, either alone or in partnership with any other person or persons, directly or indirectly (*s*), engage or be concerned, or act as a servant (*t*) in the trade or business of a ——, without the previous written consent of the purchaser; AND ALSO that he, the vendor, will, for the term of one whole year, to be computed from the date hereof, personally assist the purchaser in transacting and carrying on the trade or business, by receiving orders for the purchaser at his (the vendor's) present dwelling-house or residence at ——, or at any other dwelling-house which he may for the time being occupy, and transmitting such orders, as the same shall from time to time be received, unto the purchaser at his place of business, with all practicable dispatch; AND ALSO that the vendor will permit and suffer (*u*) the purchaser to use and associate the name of him (the vendor) with the name of the purchaser in the said trade or business, in all sales of —— by the purchaser, in order and to the intent to promote the welfare of the purchaser: BUT it is hereby expressly agreed and declared that the vendor is not to be under any obligation to attend at the wharf and premises at ——, where he lately carried on his said trade or business, and that the vendor is not to be considered as a partner with the purchaser, his executors, administrators, or assigns, or in any manner to participate with him or them in the fruits or profits of the trade or business hereby assigned, or be

within a certain district (*r*); during one year to receive orders;

to allow purchaser to use vendor's name.

Vendor not to attend to business, or be answerable as partner.

(*q*) *Smith* v. *Hancock*, [1894] 2 Ch. 377.

(*r*) In the absence of any agreement to the contrary a vendor selling the goodwill can set up a rival business, but may not solicit the customers of his old business: *Trego* v. *Hunt*, [1896] A. C. 7; *Gillingham* v. *Beddow*, [1900] 2 Ch. 242; *Curl Bros., Ltd.* v. *Webster*, [1904] 1 Ch. 685.

(*s*) *Cory* v. *Harrison*, [1906] A. C. 274.

(*t*) As to the importance of these words, see *Gophir Diamond Co.* v. *Wood*, [1902] 1 Ch. 950.

(*u*) This is a special provision which may involve the vendor in serious liabilities, and is only to be justified by the nature of the business and the restrictions subsequently introduced. As to the right of the purchaser of a business to use the vendor's name, see *Levy* v. *Walker*, 10 Ch. D. 436; *Gray* v. *Smith*, 43 Ch. D. 208; *Townsend* v. *Jarman*, [1900] 2 Ch. 698; *Chatteris* v. *Isaacson*, 57 L. T. 177.

LXII. ASSIGNMENT OF GOODWILL, ETC. OF BUSINESS.

subject to any debts, losses, charges, damages, or expenses on account or by reason or means thereof, but is to be indemnified therefrom by the purchaser: AND ALSO that the purchaser shall, from time to time and at all times hereafter, keep the vendor indemnified from and against all actions, proceedings, costs, charges, demands, and expenses whatsoever, which shall or may be instituted, sustained, or occasioned, for or by reason of the vendor having permitted the purchaser to use and associate the name of the vendor with the name or names of the purchaser, in the conduct and management of the said trade or business as aforesaid, or in any sales of —— which may be made and transacted by the purchaser, or for or by reason of the non-performance or non-execution of the said contracts and orders, or any of them: AND ALSO that the purchaser will not, at any time henceforth, use or associate the name of the vendor in any purchases which may be made by the purchaser in consequence of or relative to the said trade or business, but will contract for and purchase the same in the sole name and on the sole account of the purchaser; AND that it shall be lawful for the vendor to inquire of persons with whom the purchaser may deal for ——, as to their manner of dealing with, and the nature of their charges to, the purchaser, and to give to them such notice or notices as may be requisite, in order that the vendor may not be subject to or charged with the contracts, purchases, and dealings of the purchaser; AND further, that in case the net profits which may be derived and realised by the purchaser from the said trade or business shall, within the first year, to be computed from the date hereof, amount to or exceed £——, then the purchaser will, on the —— day of ——, 19—, pay unto the vendor the further sum of 100*l.*, free from all deductions, in addition to the prices of considerations hereinbefore expressed to be paid or secured to be paid to the vendor: PROVIDED ALWAYS that the vendor, his executors or administrators, shall be entitled at all reasonable times during the said period of one year from the date hereof, and for —— days thereafter, to have access to the offices of the said business, and to the books and accounts thereof, for the purpose of ascertaining the amount of the profits so derived and realised from the said business during such period as aforesaid.

Purchaser covenants to indemnify vendor from consequences of permission to use his name;

not to use vendor's name in purchases;

if profits exceed a certain sum, to pay additional consideration.

[AND the purchaser hereby covenants with the vendor that he the purchaser will duly pay and discharge all the debts and liabilities of the said business outstanding on the —— day of ——,

Covenant by purchaser to pay outstanding debt, &c.

as shown by the books of the business, and will keep the vendor, his executors and administrators, indemnified against the same and every part thereof respectively, and from all actions, proceedings, costs, charges, demands, and expenses in respect thereof.] LXII. ASSIGNMENT OF GOODWILL, ETC. OF BUSINESS.

IN WITNESS, &c.

THE FIRST SCHEDULE ABOVE REFERRED TO.

THE SECOND SCHEDULE ABOVE REFERRED TO.

LXIII. ASSIGNMENT *of the* BENEFIT *of an* AGREEMENT *for a* BUILDING LEASE; *and* MATERIALS, PLANT, *&c.* (*x*).

THIS ASSIGNMENT (*y*) is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), Parties.

(*x*) A formal assignment by deed is not necessary; an agreement in writing would be sufficient, which might be shortly expressed by indorsement, thus:— As to assigning agreement for a lease.

"MEMORANDUM OF AGREEMENT, made this —— day of ——, BETWEEN the within named [*vendor*], of the one part, and [*purchaser*], of, &c., of the other part: WHEREBY, in consideration of 20*l.* this day paid by the said [*purchaser*] to the said [*vendor*], the receipt whereof the said [*vendor*] hereby acknowledges, the said [*vendor*] hereby absolutely sells and transfers to the said [*purchaser*] the benefit of the within written agreement, and of all covenants and stipulations entered into with the said [*vendor*], and of all remedies for enforcing the same, and agrees, at the expense of the said [*purchaser*], to do all necessary acts and things for obtaining from the within mentioned [A. B.] a grant to the said [*purchaser*] of the lease by the said agreement agreed to be granted to the said [*vendor*]: AND the said [*purchaser*] Short precedent of indorsed agreement.

(*y*) The stamp duty will be *ad valorem* on the amount of the purchase-money; but this duty may be reduced by omission of the building materials, &c. from the conveyance and corresponding reduction of the purchase-money. Stamp.

LXIII. ASSIGNMENT OF AGREEMENT FOR LEASE.

of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WHEREAS, by an agreement dated the —— day of ——, 19—, and made between [A. B.], of the one part, and the vendor, of the other part, in consideration of the rents, covenants, and conditions thereinafter mentioned or contained, the said [A. B.] agreed to let unto the vendor ALL THAT piece or parcel of ground, &c. [*describe parcels*]: AND the vendor thereby agreed to erect on the said piece or parcel of ground —— good, substantial brick-built dwelling-houses, of an uniform elevation, conformably in every respect to the plans and specifications set forth in the schedule thereto, the said houses to be built in a workmanlike manner, with good and substantial materials of every kind, to the approbation of the surveyor for the time being of the said [A. B.], and to be covered in within —— calendar months from the date of the agreement now in recital; and to insure the said houses in the —— Fire Insurance Office to the full value thereof: AND the said [A. B.] thereby agreed, when the said houses should be covered in, to grant a lease or leases to the vendor of the said piece or parcel of land from the —— day of ——, 19—, for the term of —— years, at the yearly rent or aggregate yearly rent of £——, to be paid on the usual quarter-days, and the first payment thereof to be made on the —— day of ——, 19—, without any deduction whatsoever, except for landlord's property tax, as therein mentioned; AND it was thereby agreed that the said lease should be prepared by the solicitors of the said [A. B.], at the cost of the vendor, and should contain all the customary covenants, provisoes, conditions, and restrictions usually inserted in leases of a similar nature: AND WHEREAS the said —— dwelling-houses so agreed to be built by the vendor, as aforesaid, have been partly erected by him, but are not yet covered in: AND WHEREAS the

Recitals:

of agreement for lease;

of commencement of houses;

of agreement for purchase.

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hereby agrees with the said [*vendor*] to perform and observe all the covenants, conditions, and stipulations on the part of the said [*vendor*] contained in the said agreement, and to indemnify him from all actions, proceedings, damages, costs, expenses, claims, and demands, by reason of his, the said [*purchaser's*], non-performance or non-observance thereof.

"AS WITNESS, &c."

LXIII. ASSIGNMENT OF AGREEMENT FOR LEASE.

purchaser has agreed with the vendor for the purchase of the benefit of the said agreement [and the materials, utensils, and plant hereinafter described and hereby assigned]: NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), he the vendor hereby, as beneficial owner, assigns unto the purchaser, ALL THAT the hereinbefore recited agreement of the —— day of ——, and all benefit thereof: [AND ALSO all materials, utensils, and plant, the property of the vendor, and now being upon or in the said piece or parcel of land so agreed to be leased as aforesaid, and used or intended to be used for the purposes of or in relation to the erection of the said dwelling-houses], TO HOLD the said agreement [and all other the premises hereby assigned] unto the purchaser absolutely; subject nevertheless to the several covenants and stipulations in the said agreement contained, and on the part of the vendor, his executors or administrators, to be performed, or such of the said covenants, agreements, and stipulations, as are now unperformed or capable of taking effect (*z*): AND the purchaser hereby covenants with the vendor that he, the purchaser, will henceforth perform and observe all the covenants

Testatum.

Habendum.

Covenant by the purchaser to perform the stipulations of the contract,

(*z*) If thought advisable, a power of attorney may be here inserted as follows:—

"AND, for the consideration aforesaid, the vendor hereby irrevocably appoints the purchaser the true and lawful attorney of him, the vendor, for him and in his name, or otherwise, but at the costs and for the benefit of the purchaser, to demand, recover, receive, and give effectual receipts or discharges for any moneys which are or may become payable, and to bring or institute any action or other proceeding, and to give any notices under or by virtue of the said agreement, and to execute and do all such deeds, instruments, and acts as shall be necessary or proper, to enable the purchaser to obtain the full benefit of the said agreement and of the lease or leases to be granted thereunder, and generally to act in the premises, as by the purchaser shall be deemed expedient; AND for all or any of the purposes aforesaid to appoint a substitute or substitutes, and such substitution from time to time at pleasure to revoke."

Power of attorney to sue on agreement.

LXIII. ASSIGNMENT OF AGREEMENT FOR LEASE.

and stipulations in the hereinbefore recited agreement expressed, and on the part of the vendor to be performed and observed, or such of the said covenants and stipulations as now remain subsisting, unperformed, or capable of taking effect; AND will at all times hereafter effectually keep indemnified the vendor of, from, and against the same covenants and stipulations, and all actions, proceedings, costs, charges, damages, expenses, claims, and demands whatsoever, for or in respect of the same covenants, stipulations, and agreements, or otherwise in relation thereto (*a*).

and indemnify the vendor in respect thereof.

[*Add statement as to value if appropriate, see* ante, *p.* 360.]

IN WITNESS, &c.

LXIV. ASSIGNMENT *of a* BOND DEBT (*b*).

THIS ASSIGNMENT (*c*) is made the —— day of ——, BETWEEN [*vendor*], of, &c., of the one part; and [*purchaser*], of, &c., of the other part: WHEREAS by a bond or obligation dated the —— day of —— last, under the hand and seal of [*obligor*], of, &c., the said [*obligor*] became bound unto the said [*vendor*], in the sum of £——, conditioned for the payment unto the said [*vendor*], his executors or administrators, of the sum of £——, and interest thereon, at the rate of —— per centum per annum, from the day of the date thereof, on the —— day of —— then next ensuing; AND WHEREAS the said principal sum of £—— remains owing to the said [*vendor*], together with interest thereon

Parties.

Recitals: of bond;

of debt being due;

(*a*) Add, if a power of attorney is given—

And also in respect of the power.

"AND ALSO for or in respect of the power or authority hereinbefore given to the purchaser, or any actions or other proceedings, which may be brought or instituted by the purchaser, or his or their substitute or substitutes, by virtue thereof, or otherwise in relation thereto."

(*b*) Notice of this assignment must be given to the debtor. If this is done, no power of attorney to use the name of the assignor will be necessary.

(*c*) Stamp, *ad valorem* at the rate of 6*d.* for every 100*l.* or part of 100*l.* of the amount transferred (including interest in arrear): see Stamp Act, 1891, sched. *tit.* "Mortgage," &c. (4).

LXIV. ASSIGNMENT OF A BOND DEBT.

of contract for purchase.

from the —— day of ——; AND WHEREAS the said [*purchaser*] has agreed with the said [*vendor*] for the purchase of the said bond debt, at the price of £——. NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid to the said [*vendor*] by the said [*purchaser*] (the receipt whereof is hereby acknowledged), he, the said [*vendor*], hereby, as beneficial owner, assigns unto the said [*purchaser*], ALL THAT the hereinbefore recited bond or obligation, and all interest now due, or hereafter to become due for the same, and the full benefit thereof, and of all securities for the said debt, To HOLD and receive the premises hereby assigned unto the said [*purchaser*] absolutely.

Testatum.

Habendum.

IN WITNESS, &c.

LXV. ASSIGNMENT *of a* POLICY *of* LIFE ASSURANCE *by a* VENDOR *to a* PURCHASER (*d*).

THIS ASSIGNMENT (*e*) is made the —— day of ——, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part: WITNESSETH that, in consideration of the sum of £—— now paid to the vendor by the purchaser (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, assigns unto the purchaser, ALL THAT policy of assurance effected in the —— Assurance Society in the name of the vendor, and payable on the vendor's death, dated the —— day of ——, and numbered —, for the sum of £——, and under an annual premium of £——; AND the said sum of £—— thereby assured, and all sums of money, bonuses, and benefits which may become payable or receivable under or by virtue of the same policy, To HOLD the same unto the purchaser absolutely; AND the vendor hereby covenants with the purchaser that he the vendor will not hereafter do or knowingly omit or suffer any act

Parties.

Testatum.

Assignment.

Policy.

Habendum.

Covenants by vendor:

(*d*) Notice in writing of this assignment must be given to the assurance office, at their principal place of business: see Policies of Assurance Act, 1867, s. 3.

(*e*) Stamp, *ad valorem* on the purchase-money. Under sect. 118 of the Stamp Act, 1891, no payment can be made to any person claiming under the assignment until it is duly stamped.

LXV. ASSIGNMENT OF POLICY OF LIFE ASSURANCE.

or thing (except so far as respects the payment of the future premiums to become due in respect of the said policy), by means whereof the said policy of assurance shall become void or voidable, or whereby the purchaser shall be defeated or prejudiced in receiving the said sum of £—— assured thereby, or any such money, bonuses, or benefits as aforesaid; AND that, in case he the vendor shall hereafter go beyond the seas, or do, omit, or suffer any other act or thing by reason whereof the premium payable in respect of the said policy shall be increased beyond the said annual sum of £——, then he the vendor, his executors or administrators, will pay such additional premium, and effectually indemnify the purchaser, his executors, administrators, and assigns, from all loss or damage in respect thereof (*f*).

not to occasion any forfeiture;

to pay any additional premium for going abroad, &c.

IN WITNESS, &c.

As to vendor's covenant not to leave the kingdom.

(*f*) The propriety of this covenant depends on the nature of the agreement between the parties. If the vendor does not go the length of contracting to pay any additional premium which his departure from England might occasion (which is certainly not of course), he ought at least to stipulate not to leave the country without notice, and without affording the purchaser an opportunity of paying the additional premium. The covenant would then be varied as follows:—

"AND that he the vendor will not at any time hereafter go or travel to any place or places out of Great Britain, or do, omit, or suffer any act or thing whereby any additional or increased premium or payment may become payable in respect of the said policy, or change his place of residence, without giving previous notice or intimation in writing of his intention so to do, to the purchaser, his executors, administrators, or assigns, so as to afford him or them an opportunity of paying any additional premium or premiums, which according to the terms of such policy would become payable in that event; AND that the executors or administrators of him, the vendor, will, within —— days after his death, give notice or information in writing thereof to the purchaser, his executors, administrators, or assigns, by letter sent through the post to his or their usual or last known place of residence in England."

Sometimes, by the terms of the policy, an additional premium becomes payable on entering into active military or naval service. The draughtsman will, of course, in every case frame the stipulation with reference to the particular terms of the policy in question.

LXVI. CONVEYANCE *of an* ADVOWSON. VARIATIONS *for* CONVEYANCE *of a* NEXT PRESENTATION.

THIS CONVEYANCE (*f*) is made the —— day of ——, 19—, BETWEEN [*vendor*], of, &c. (hereinafter called "the vendor"), of the one part, and [*purchaser*], of, &c. (hereinafter called "the purchaser"), of the other part. Parties.

WHEREAS the vendor is seised of the advowson and perpetual right of presentation of and to the rectory and parish church of ——, in the county of ——, for an estate in fee simple in possession. Recitals of vendor's seisin, &c.

AND WHEREAS more than twelve months have elapsed since the last institution and admission to the said rectory.

AND WHEREAS the vendor has agreed with the purchaser to sell to him the said advowson for the sum of £——.

NOW THESE PRESENTS WITNESS that, in pursuance of the said agreement, and in consideration of the sum of £—— now paid by the purchaser to the vendor (the receipt whereof is hereby acknowledged), the vendor hereby, as beneficial owner, grants unto the purchaser ALL THAT the advowson and perpetual right of presentation (*g*), of and to the rectory of the parish church of ——, in the county of ——, and the rights and appurtenance thereunto belonging, TO HOLD the same unto the purchaser in fee simple (*h*). *Testatum.*

IN WITNESS, &c.

(*f*) Stamp, *ad valorem*.

(*g*) In the case of a sale of the next presentation, the conveyance will recite that the vendor is entitled to the next presentation to the rectory and parish church of, &c., and the parcels will be as follows:—

"All that the right of presentation to the rectory of the parish church of ——, in the county of ——, for the next avoidance of the same only."

(*h*) As to sales of advowsons, see the Benefices Act, 1898, which provides, by sect. 1 (1), that a transfer of a right of patronage of a benefice shall not be valid unless it is registered in the prescribed manner in the registry of the diocese within one month from the date of the transfer or such extended time as the bishop allows.

NOTE AS TO "PARCELS."

As a rule the description of the property sold will be taken from the contract, and for this reason detailed descriptions of "parcels" are not included in the foregoing Precedents. The following forms of description may, however, be found useful in cases where the contract does not contain a sufficient description. Except in the case of house property, a plan will be convenient in the majority of cases, but it is safer not to rely solely on a plan, but to add to it such verbal description as is possible. Where the verbal description is contained in a schedule to the conveyance that schedule, if convenient, can be divided into columns setting out the numbers on the plan to the conveyance, or on the ordnance map, the names by which the fields are commonly known, the cultivation, the acreage, the names of tenants, and the dates of and parties to leases, &c. Where there is no plan, and no definite boundaries can be stated, the numbers on the ordnance map can be referred to, but in that case it should be stated expressly which edition of the ordnance map is referred to.

PARCELS.

Freehold land (no plan).

1. All that piece or parcel of land commonly called ——, situate in the parish of ——, in the county of ——, containing by estimation —— acres, —— roods, and —— perches, or thereabouts, bounded on the north by ——, on the south by ——, on the west by ——, and on the east by ——, now in the occupation of ——, or his undertenants [which said piece or parcel of land is numbered [*or*, is part of the close of land numbered ——] on the ordnance survey map of the said parish, dated in the year ——].

Freehold land and house (no plan).

2. All that piece of land containing [by estimation] —— acres, —— roods, and —— perches, or thereabouts, situate in the parish [township] of ——, in the county of ——, and bounded on the north by ——, on the south by ——, on the west by, &c., together

with the messuage or tenement and outbuildings erected or standing thereon [and known as ——], which premises were lately in the tenure or occupation of ——, or his undertenants or assigns, and are now in the occupation of, &c. [*add reference to ordnance map if convenient*].

Freehold house in town.

3. All that messuage or tenement with the yard, gardens, coach-house, stables, garage, offices, and outbuildings thereunto belonging, situate on the —— side of —— Street, in the parish of ——, in the county of ——, and numbered —— in the said street [*or*, known as ——].

Freehold land by reference to plan.

4. All the piece or parcel of land containing —— acres, —— roods, and —— poles, or thereabouts, situate in the parish of ——, in the county of —— [and commonly called ——] [on the —— side of a road called ——], which is delineated with the abuttals and boundaries thereof on the plan to these presents and thereon is coloured ——.

Newly erected houses.

5. All those pieces or parcels of land situate, &c. [forming part of certain land known as ——, &c.], and all those —— messuages or dwelling-houses, shops and outbuildings erected or now in course of erection on the said respective pieces or parcels of land, and known as or intended to be called Nos. —— and —— in —— Street [*add reference to plan if thought necessary*].

Farm.

6. All that messuage or farmhouse, outbuilding, and closes or pieces of land known as the —— Farm, situate in the parish of ——, in the county of ——, and comprising in the whole —— acres, &c., or thereabouts [more particularly described in the schedule hereto and delineated and coloured —— on the plan hereto].

Manors.

7. All those the manors or lordships or reputed manors or lordships of, &c.

Mansion-house and estate.

8. All that mansion-house, with the park, gardens, buildings, lands, and hereditaments occupied or held therewith, known as the —— Estate, situate in the several parishes of ——, in the county of ——, particularly described in the schedule hereto and delineated and coloured pink on the plan hereto.

Freehold land (connecting modern with old description).

9. All those, &c. [*modern description*], which premises were formerly part and parcel of land called, &c. [which were formerly called and conveyed by the description following, namely, &c.].

Freeholds by reference to another deed.

10. All and singular the [pieces or parcels of land, messuages, or tenements] hereditaments and premises by the hereinbefore recited [within written] deed of ——, the —— day of ——, &c., granted or otherwise assured.

Leaseholds by reference to lease.

11. All and singular the [pieces or parcels of land, messuages, or tenements] hereditaments and premises comprised in or demised by the hereinbefore recited [within written] lease of, &c. [*where the description has changed since the date of the lease, add* "which now are known as ——].

Mining lease.

12. All and singular the pieces of land, mines, minerals, rights, powers and privileges, and all other the hereditaments and premises comprised in and demised and granted respectively by the hereinbefore recited [within written] lease, &c.

Right of way.

13. Together with full right of way for the said [*purchaser*] and his successors in title, and his and their lessees or tenants, owners or occupiers of the said messuage or tenement, and all persons authorised by him or them [in common with the vendor and others], at all times hereafter, by day or by night, and for all purposes [other than working mines or minerals], with or without horses or other animals, carts, or carriages, or vehicles along, over, and upon the street or road called, &c., *or,* leading from —— to —— [delineated on the plan hereto and thereon coloured brown] [the purchaser and his successors in title, owners, or occupiers as aforesaid from time to time paying his or their due proportion with the other persons entitled to a like right, being the owners or occupiers of —— (according to the extent of his or their frontage), of the expense of maintaining the said street or road, and the fences adjoining the same, in proper repair until the same shall be taken over by the District Council or other local authority].

TRANSFER OF LAND UNDER THE LAND REGISTRATION ACT, 1925, AND RULES.

I. TRANSFER *of* FREEHOLD LAND (WHOLE). (*Rule* 98.)

H.M. LAND REGISTRY.

Land Registration Act, 1925.

District ——.

Title No. ——.

Property ——.

[*Date.*] In consideration of —— pounds [£——], I, A. B., of, &c., hereby transfer to C. D., of, &c., the land comprised in the title above referred to.

Signed, sealed, and delivered by the said A. B., in the presence of E. F., of, &c. } *Signature of A. B.* (SEAL.)

Note.—Where the transfer is made under sect. 37 of the Act, and deals with part only of the land comprised in a title, or is made under Rule 73, the number of the title must be left blank, and instead of the words "the title above referred to" a reference to the last preceding document of title containing a description of the land must be inserted.

When the consideration is advanced by different persons in separate sums, or does not consist or wholly consist, of money, its nature or the separate payments made, may be concisely stated.

Where the transfer is to two or more jointly, no addition need be made to the form.

The amount of the consideration should be stated in words, and repeated in figures—as, for instance, "three hundred and seventy pounds [£370]."

Where more convenient the parties may be defined as "the vendor," "the purchaser," &c., and the instrument can be framed in the third person.

II. TRANSFER OF FREEHOLD LAND.

II. TRANSFER *of* FREEHOLD LAND (PART). (*Rule* 98.)

As Form I., adding after "the land" these words, "shown and edged with red on the accompanying plan and known as [and—*if it is desired that a particular verbal description be entered on the Register*—described in the schedule hereto], being part of the land comprised in the title above referred to."

[*Add schedule if desired.*]

[To be executed as in Form I. by the transferor. The plan must be signed by the transferor and by or on behalf of the transferee.]

Note.—Where sufficient particulars (by parcel number or otherwise) to enable the land to be fully identified on the general map, ordnance map, or filed plan, can be furnished without the special plan, such particulars may be introduced into the form instead of the reference to a plan.

III. TRANSFER (*in* LIEU *of a* VESTING INSTRUMENT *under a* SETTLEMENT) *to a* TENANT *for* LIFE. (*Rule* 99.)

[*Heading as in Form I.*]

[*Date.*] Pursuant to a trust deed of even date herewith, made BETWEEN A. B. [*transferor*], C. D. [*tenant for life and transferee*], E. F. and G. H. [*trustees of the settlement*], I, the said A. B., hereby transfer to the said C. D. the land comprised in the title above referred to.

And I, the said A. B., declare as follows:—

(a) The land is vested in the said C. D. upon the trusts from time to time affecting it by virtue of the said trust deed.

(b) The said E. F. and G. H. are the trustees of the settlement.

(c) The following powers relating to land are expressly conferred by the said trust deed in extension of those conferred by the Settled Land Act, 1925 [*fill in the powers, if any*].

(d) The said C. D. [*or, as the case may be*] has the power to appoint new trustees of the settlement.

And I apply for the entry of the following restrictions (*a*):—

No disposition under which capital money arises is to be regis-

---

(*a*) Rule 58.

tered unless the money is paid to A. B., of, &c., and C. D., of, &c. [the trustees of the settlement, of which there must be two and not more than four individuals, or a trust corporation], or into Court.

Except under an order of the Registrar, no disposition is to be registered unless authorised by the Settled Land Act, 1925.

Note.—In cases where the settlement so provides, a further provision may be added to the restriction that no transfer of the mansion house (shown on an attached plan or otherwise adequately described to enable it to be fully identified on the general map, ordnance map, or filed plan) is to be registered without the consent of the said A. B. and C. D., or an Order of the Court.

IV. TRANSFER *where* TRUSTEES *of the* SETTLEMENT *are the* STATUTORY OWNERS *and are to be* REGISTERED *as* PROPRIETORS. (*Rule* 99.)

[*Heading as in Form I.*]

Follow Form III., substituting E. F. and G. H. for C. D., and altering the declaration thus:—

(a) The land is vested in the said E. F. and G. H. as statutory owners, the tenant for life being C. D., of, &c., a minor, who was born on the [*date*].

(b) and (c) [*As in Form III.*]

(d) The said E. F. and G. H., during the minority of the said C. D., are the persons to appoint new trustees of the settlement.

And we apply for the entry of the following restriction (*a*).

Except under an order of the Registrar, no disposition is to be registered unless authorised by the Settled Land Act, 1925, and except where the sole proprietor is a trust corporation, no disposition under which capital money arises is to be registered unless the money is paid to at least two proprietors.

Note.—This restriction does not apply where the statutory owners are not the trustees of the settlement.

(*a*) Rule 58.

V. TRANSFER WHERE TENANT FOR LIFE ALREADY REGISTERED.

V. TRANSFER *where the* TENANT *for* LIFE *is already* REGISTERED *as* PROPRIETOR. (*Rule* 100.)

[*Heading as in Form I.*]

[*Date.*] Pursuant to a trust deed of even date herewith, made BETWEEN, &c., I, the said A. B., hereby declare as follows:—

(a) The land is vested in me upon the trusts from time to time affecting it by virtue of the said trust deed.

(b) and (c) [*As in Form III.*]

(d) I have the power to appoint new trustees of the settlement.

And I apply [*&c., as in Form III.*].

VI. TRANSFER *of* LAND, *acquired with* CAPITAL MONEY *under a* SETTLEMENT, *to a* TENANT *for* LIFE *of full age.* (*Rule* 101.)

[*Heading as in Form I.*]

[*Date.*] In consideration of —— pounds [£——] paid out of capital money arising under a trust deed dated, &c., and made BETWEEN, &c., I, M. N., of, &c. [*vendor*], hereby transfer to A. B., of, &c. [*tenant for life*], the land comprised in the title above referred to.

And I, the said A. B., hereby declare as follows:—

[*Continue as in Form III.*]

VII. TRANSFER *of* LAND *in exercise of a* POWER *of* SALE *contained in a* REGISTERED CHARGE. (*Rule* 114.)

As Form I., adding after "[£——]" the words "and in exercise of the power of sale conferred by the charge, dated, &c., and registered, &c.," and at the end, "discharged from the said charge."

VIII. TRANSFER *of* LEASEHOLD LAND (WHOLE *or* PART). (*Rules* 109 *and* 115.)

As Form I., adding at the end "for the residue of the term granted by the registered lease."

Where it is intended to negative the covenants implied by sect. 24 of the Act, the following words may be added to the form:—

"The covenant by the transferor [*or*, transferee, *or*, the covenants by the transferor and transferee] implied by sect. 24 of the Act is [*or*, are] not to be implied."

IX. TRANSFER *of* LEASEHOLD LAND *being part of the* LAND *originally comprised in the* LEASE, *where the* RENT *has already been* APPORTIONED. (*Rules* 109 *and* 116.)

[*Heading as in Form I.*]

In consideration of —— pounds [£——], I, A. B., of, &c., hereby transfer to C. D., of, &c., the land comprised in the title above referred to for the residue of the term granted by the registered lease subject to the apportioned rent of —— pounds [£——], being part of the rent of —— pounds [£——] reserved by the registered lease.

And it is hereby declared that the covenants implied by sect. 24 of the Act shall, so far as they relate to the payment of rent, be varied so as to apply to the said apportioned rent only.

X. THE LIKE *where the* RENT *has not already been* APPORTIONED. (*Rule* 116.)

[*Heading as in Form I.*]

In consideration of —— pounds [£——], I, A. B., of, &c., hereby transfer to C. D., of, &c., the land shown and edged with red on the accompanying plan, being part of the land comprised in the title above referred to for the residue of the term granted by the registered lease.

X. OF LEASEHOLD WHERE RENT NOT ALREADY APPORTIONED.

And it is hereby declared as follows:—

1. The rent of —— pounds [£——] reserved by the registered lease shall be apportioned as follows, namely, the yearly rent of —— pounds [£——] part thereof shall be payable exclusively out of the land hereby transferred in exoneration of the residue of the land comprised in the said lease, and the yearly sum of —— pounds [£——], the balance of the said rent of £——, shall be payable exclusively out of the residue of the said land in exoneration of the land hereby transferred.

2. In substitution for the covenants implied under sect. 24 of the Act, the respective covenants set forth in Part X. of the Second Schedule to the Law of Property Act, 1925, shall be implied in this transfer.

[*Mutual charges in support of the above covenants may be added if desired, and if added should be accompanied by application to register as charges.*]

XI. TRANSFER *of* LAND *to a* COMPANY *or* CORPORATION. (*Rule* 121.)

[*Heading as in Form I.*]

[*Date.*] Pursuant to a licence [*&c., describing it, or,* the —— Act, ——], ——, I, A. B., of, &c. [*the proprietor*], hereby transfer to —— [*fill in the corporate name of the transferee*], all the land [*&c., as in Form I. or II. to the end of the Form*].

[*To be executed as Form I.*]

Note.—If the licence or statute contains any limit to the extent of land which may be conveyed or held, or any provisions as to the purposes for which it may be used, add at the end of the form: "And it is hereby declared that the land already held by the transferees under such licence [*or,* Act], together with the land hereby transferred, does not exceed —— acres [*or,* that no land other than that hereby transferred is held by the transferees], and that the present transfer is for the purposes of [*fill in the purposes for which the land is to be used*]."

XII. TRANSFER *of* LAND *for* CHARITABLE USES. (*Rule* 122.)

[*Heading as in Form I.*]

[*Date.*] I, A. B., of —— [*the proprietor*], hereby transfer to C. D., of —— [*the trustees of the —— Charity*], all the land [*&c., as in Form I. or II. to the end of the Form*] upon the trusts of [*a scheme of the Commissioners*] [*a deed*] [*the will of ——*], dated ——, or [*for the purposes of a public park, &c.*]

Note.—If the trust deed, will, or other instrument is referred to in the transfer a certified copy of such deed, will, or instrument must be lodged with the transfer, with a reference to the statutory or other power (if any) under which the transaction is carried out.

XIII. TRANSFER *of a* SMALL HOLDING. (*Rule* 118.)

[*Same heading as in Form I.*]

——, of ——, 19—. In consideration of £—— the County Council of —— hereby transfer to [*name*], of [*address and description*] the land (shown and edged with red on the accompanying plan, being part of the land) comprised in the title above referred to, subject to the conditions of sect. 12 of the Small Holdings and Allotments Act, 1908, and except and reserved all minerals vested in the Council [*unless the Ministry of Agriculture and Fisheries have otherwise directed*].

[*Seal of the Council.*]

Notes.—If a plan is annexed it must be sealed by the Council and signed by or on behalf of the purchaser. The form may be varied to suit a sale made in consideration of a rentcharge.

When the land is sold free from some only of the conditions of sect. 12 of the Act of 1908, the following words may be substituted for the reference to those conditions:—

"freed from condition (b) [*or, as the case may be*] of sub-sect. (1) of sect. 12 of the Small Holdings and Allotments Act, 1908, but otherwise subject to the condition of that section."

XIV. TRANSFER BY A COUNTY COUNCIL.

XIV. TRANSFER *by* County Council *of* Land *not for* Small Holding. (*Rule* 119.)

[*Heading as in Form I.*]

——, of ——, 19—. In consideration of £—— the County Council of —— hereby transfer to [*name*], of [*address and description*] the land (shown and edged with red on the accompanying plan, being part of the land) comprised in the title above referred to, freed from the conditions of sect. 12 of the Small Holdings and Allotments Act, 1908.

[*Seal of the Council.*]

Notes.—If a plan is annexed it must be sealed by the Council and signed by or on behalf of the purchaser.

Where land is sold freed from some only of the conditions Form XIII. should be used.

XV. TRANSFER *of* Land *imposing* Restrictive Covenants *under Sect.* 40 *of the Act.* (*Rule* 135.)

As Form II., adding at the end: "And C. D. hereby covenants with A. B. for the benefit of the remainder of the land comprised in the above title number as follows, namely":—[*here add the restrictions, as for instance*]:—

1. No house on the land transferred shall be used otherwise than as a private dwelling-house or flat.
2. The building line shown on the plan shall be observed.
3. Nothing shall be done or permitted on the land transferred that shall be an annoyance to the owners of adjoining land.
4. No house shall be erected on the land transferred of a less value than £500.

And we, the said A. B. and C. D., hereby apply to the Registrar to enter notice of the said covenants on the register.

[*To be executed as Form I. by both parties.*]

Note.—The conditions must be so framed as to be clear and intelligible when placed in the register of the land transferred, without reference to any document or matter of law or fact which does not appear thereon.

Only restrictive covenants can be registered. Covenants to expend money or to do any work on the land may be added to the transfer.

This form must be accompanied by a certified copy thereof.

XVI. EXCHANGE. (*Rule* 136.)

[*Heading as in Form I.*]

[*Date.*] In consideration of the transfers hereinafter contained [*and, if so,* of the sum of —— pounds [£——] paid by C. D. for equality]:—

1. I, A. B., of, &c., hereby transfer to C. D., of, &c., the land shown and edged with red on the accompanying plan, signed by me and by the said C. D. [*or,* the plan attached hereto, *or,* endorsed hereon].

2. I, the said C. D., hereby transfer to the said A. B. the land shown and edged with green on the same plan [*add if required*].

3. I, the said A. B., hereby apply to have the said land, edged with green, amalgamated with the land comprised in title No. ——, of which I am the proprietor.

4. I, the said C. D., apply to have the said land, edged with red, amalgamated with the land comprised in title No. ——, of which I am the proprietor.

[*To be executed as in Form I. by both parties.*]

Note.—If preferred, the transaction may be carried out by two instruments in Form I. or II., altering the consideration as follows:—

"In consideration of a transfer [*or,* conveyance] of even date herewith [and, *if so,* of the sum of —— pounds [£——] paid to me for equality]."

When and so far as the land taken in exchange is not registered, the conveyance thereof will be in the ordinary form.

If it is desired that a particular verbal description of the land be entered in the register, add after the word "plan" or "hereon," as the case may be, the words "and described in the [*first, second*] schedule hereto"—and add a schedule or schedules at the end.

Note.—Where sufficient particulars (by parcel number or otherwise), to enable the land to be fully identified on the general map, ordnance map, or filed plan, can be furnished without a special plan, such particulars may be introduced into the form instead of the reference to a plan.

COPYHOLD COMPENSATION AGREEMENTS.

PRELIMINARY NOTE.

Form of Agreement.—This agreement is a simplified form of the agreement set out in the 13th schedule to the Law of Property Act, 1922. In either form it is a "compensation agreement" within the meaning of the Law of Property Act, 1922, s. 138, sub-s. (3), which may be effected independently of the Copyhold Act, 1894, and used as explained in sect. 138, sub-sect. (11), of the Law of Property Act, 1922.

Parties.—The parties to the agreement in this form are by sect. 138, sub-sect. (3), of the Law of Property Act, 1922, required to be the persons who on a sale would be able to dispose of the manorial incidents and the land affected thereby respectively. This expression means (see sect. 188, sub-sect. (8), *ibid.*) the person (including a mortgagee whose power of sale has arisen) who is able on a sale to convey the same to a purchaser free from incumbrances, and includes the other persons, if any, whose concurrence or consent, for the purpose of giving a receipt for the purchase-money or conveying any estate or interest or consenting to the sale is necessary for the completion of the sale; and cf. Schedule XII. of the Law of Property Act, 1922, as amended by Schedule II. of the Law of Property Amendment Act, 1924.

See also sect. 142, *ibid.*, which provides for separate agreements by persons entitled to give receipts, &c., on the sale of the derivative interests mentioned in that section, and cf. Schedule XII. of the Law of Property Act, 1922, sub-ss. (3) and (8) (c).

Statutory Declaration.—Sub-sect. (5) (ii) of sect. 138 of the Law of Property Act, 1922, provides that the lord or tenant shall at the request of the other furnish a statutory declaration stating particulars of his estate or interest in the manor or in the land affected by manorial incidents, and giving such further information (if any) as may be required to show who has power to enter into the compensation agreement as respects the manor of

the land, and to give a receipt for the compensation money or any instalments thereof.

This declaration may take the form of an abstract or declaration showing title; in any case it is probable that an abstract will be usual, as an agreement for extinguishment would probably not be reached unless all parties to the deed are satisfied as to the title of the others to the rights which are to be disposed of: see Wolstenholme and Cherry's Conveyancing Statutes, 11th edition, Vol. I., p. 33. The terms "lord" and "tenant" are explained in sect. 143 of the Law of Property Act, 1922.

Terminable and Variable Rentcharge.—Sub-sects. (5) (i) and (6) of sect. 138 of the Law of Property Act, 1922, indicate the nature of the terminable and variable rentcharge comprised in the form of agreement provided by the statute; and see Copyhold Act, 1894, ss. 15, 17, and 27—31. Although a definite priority and security is created by these statutes, there appears to be nothing which vests the security with a legal interest within the meaning of sect. 1 of the Law of Property Act, 1925, and even if the charge is registered as a general equitable charge under the Land Charges Act, 1925, s. 10 (which should be done in every case), it is liable to be overreached by a conveyance under sect. 2 of the Law of Property Act, 1925.

The alternative form of compensation by payment of a gross sum referred to in the agreement (see Law of Property Act, 1922, s. 138, sub-s. (7)) might offer a greater security for any unpaid balance, as it carries a legal power of sale.

I. COMPENSATION AGREEMENT *for* EXTINGUISHMENT *of* MANORIAL INCIDENTS (*a*).

Manor of —— in the County of ——.

AN AGREEMENT made the —— day of ——, 19—, Parties.
BETWEEN (*b*) A. B. [*lord of the above-mentioned manor*], of the one part, and C. D. [*owner of the land described in the first schedule hereto formerly copyhold of the said manor but now en-*

(*a*) For a full form in which a mortgagee and trustees of settlement are parties, see Form III. No stamp is required for the agreement: sect. 139, sub-sect. (1) (vii).

(*b*) Only the parties who upon a sale of the manorial incidents and of the land affected could make a title thereto respectively and give a receipt for the purchase-money should be made parties: see Preliminary Note.

I. EXTINGUISHMENT OF MANORIAL INCIDENTS.

franchised by virtue of the Law of Property Act, 1922], of the other part.

Agreement.

1. Pursuant to the Law of Property Act, 1922, it is agreed that the compensation for the extinguishment of the manorial incidents saved by Part V. of that Act affecting the said land [and of the rights of the lord in or to any mines and minerals (*c*) in or under the said land, and the sporting and other rights affecting the same preserved by the twelfth schedule to that Act] shall be the sum of —— pounds with interest thereon, payable half-yearly at the rate of five and a half per cent. per annum from the date hereof [*or,* the principal sum of —— pounds to be paid by twenty equal instalments, the first instalment to be paid on the first day of January next with interest at five and a half per cent. per annum on the said principal sum from the date hereof; AND a further instalment with interest at the like rate on so much of the said principal sum as for the time being remains unpaid to be paid on every subsequent first day of January until the said principal sum shall be fully paid (all interest up to date being paid with the instalments), and so long as any of the said instalments and interest remain payable a terminable and variable rentcharge (*d*) commencing from the date hereof and accruing from day to day, but payable at the same time as the instalments and interest, shall issue out of the said land of an amount equal to the said instalments and interest from time to time payable and so as to secure the same (*e*).

2. The said A. B. hereby acknowledges the right of the said C. D. to production of the documents mentioned in the 1st part of the second schedule hereto and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

(*c*) The lord's rights to mines and minerals are not to be deemed manorial incidents unless it is otherwise agreed, but they may be included in the compensation agreement, and they must in that case be specially mentioned if they are to be released to the tenant; the agreement operates as a conveyance to the tenant of such right notwithstanding that the agreement may not be under seal. If the tenant agrees to release his rights and grant facilities to the lord, this may be done by release and grant in this agreement, which should in that case be executed under seal.

(*d*) This rentcharge appears to come within sect. 10 of the L. C. A. 1925, and should be registered under that section. See note "Terminable and Variable Rentcharge," *ante,* p. 495.

(*e*) If the compensation is not paid in one gross sum, the agreement should be executed in duplicate.

I. EXTINGUISHMENT OF MANORIAL INCIDENTS.

3. The said C. D. hereby acknowledges the right of the said A. B. to production of the documents mentioned in the 2nd part of the second schedule hereto and to delivery of copies thereof, and hereby undertakes for the safe custody thereof.

4. The steward's compensation and all costs and expenses paid or incurred by the lord and recoverable from the tenant in respect of the extinguishment have been included in the compensation money aforesaid.

As WITNESS the hands of the parties hereto the day and year first above written (*e*).

THE FIRST SCHEDULE.

[*Description* (*f*) *of the land affected by the manorial incidents.*]

THE SECOND SCHEDULE.

First Part.

[*Particulars of documents relating to the said manor and retained by the said A. B.*]

Second Part.

[*Particulars of documents relating to the said land and retained by the said C. D.*]

II. FORM *of* RECEIPT *to be* ENDORSED *on the* COMPENSATION AGREEMENT (*g*).

The Manor of —— in the County of ——.

Receipt for fines, &c.

1. The within-named lord of the above-mentioned manor hereby acknowledges that all rents, fines, reliefs, heriots and fees, and all other (if any) manorial incidents and rights payable in respect of the land referred to in the within agreement, have been duly discharged.

2. The said lord hereby acknowledges receipt of the compensation money by the within-written agreement agreed to be paid, and all interest (if any) due thereon (*h*).

[*Date.*] [*Signature.*]

(*e*) See note (*e*) previous page.

(*f*) The description on the Court Rolls may be obsolete, in which case it would be advisable to insert a fresh description. The expense would be borne by the party requiring the new plan or description.

(*g*) See also Form IV.

(*h*) Instead of clause 2, which is only applicable to a single gross sum, separate receipts must be given as and when each instalment is paid.

III. EXTINGUISHMENT OF MANORIAL INCIDENTS.

III. COMPENSATION AGREEMENT *for* EXTINGUISHMENT *of* MANORIAL INCIDENTS (*i*).

The Manor of —— in the County of ——.

AN AGREEMENT made the —— day of ——, 19—, BETWEEN A. B., of &c. [*lord of the above-mentioned manor*], of the first part; C. D., of, &c. [*mortgagee of the said manor*], of the second part; E. F., of, &c., and G. H., of, &c. [*Settled Land Act trustees* of the vesting deed affecting the said manor], of the third part; X. Y., of, &c. [*the owner of the land described in the first schedule hereto, formerly copyhold of the said manor, but now enfranchised by virtue of the Law of Property Act*, 1922], of the fourth part; and H. J., of, &c., and K. L., of, &c. [*Settled Land Act trustees of the vesting deed affecting the said land*], of the fifth part.

Note.—In framing compensation agreements only the persons who on a sale of the manorial incidents and of the land affected would have been able to make a title thereto respectively and give a receipt for the purchase-money will be made parties.

WITNESSETH AS FOLLOWS:—

1. Pursuant to the Law of Property Act, 1922, it is agreed that the compensation for the extinguishment of the manorial incidents saved by Part V. of that Act affecting the said land [and of the rights of the lord in or to any mines and minerals in or under the said land, and the sporting and other rights affecting the same preserved by the twelfth schedule to that Act] shall be the sum of —— pounds, with interest thereon payable half-yearly at the rate of five and a half pounds per cent. per annum from the date hereof until paid [*or*, the principal sum of —— pounds, to be paid by twenty equal instalments, the first instalment to be paid on the first day of January next, with interest at five and a half per cent. per annum on the said principal sum from the date hereof, and a further instalment, with interest at the like rate, on so much of the said principal sum as for the time being remains unpaid, to be paid on every subsequent first day of January until the said principal sum shall be fully paid (all interest up to date being paid with the instalments), and so long as any of the said

(*i*) This is the form set out in Schedule XIII. of the L. P. A. 1922, including a number of parties in addition to the lord of the manor and of the tenant, parties in the previous Form I., *ante*, p. 495.

instalments and interest remain payable a terminable and variable rentcharge (*k*), commencing from the date hereof and accruing from day to day, but payable at the same time as the instalments and interest, shall issue out of the said land [*or*, the part of the said land described in the 1st part of the first schedule hereto] of an amount equal to the said instalments and interest from time to time payable, and so as to secure the same].

2. The said —— [*the person who retains the custody of the documents mentioned in the 1st part of the second schedule which relate to the manor*] hereby acknowledges the right of the said —— to production of the documents mentioned in the 1st part of the second schedule hereto, and to delivery of copies thereof [and hereby undertakes for the safe custody thereof].

3. The said —— [*the person who retains the documents mentioned in the 2nd part of the second schedule which relates to the land*] hereby acknowledges the right of the said —— to production of the documents mentioned in the 2nd part of the second schedule hereto, and to delivery of copies thereof [and hereby undertakes for the safe custody thereof].

4. The steward's compensation and all costs and expenses paid or incurred by the lord and recoverable from the tenant in respect of this extinguishment have been included in the compensation money aforesaid.

As WITNESS the hands of the parties hereto the day and year first above written.

Note.—If the compensation is not paid in one gross sum, then the agreement should be executed in duplicate. If the tenant releases his rights in the minerals and grants any facilities for working the same, the release and grant may be inserted in the agreement, which should then be executed under seal. Though the mines and minerals included in the copyhold tenement are enfranchised, the rights in relation thereto are not affected unless expressly included as in paragraph 1.

The undertaking in paragraphs 2 and 3 will be omitted where a mortgagee or trustee retains the documents.

(*k*) As to registration, see note "Terminable, &c. Rentcharges," *ante*, p. 495.

III. EXTINGUISHMENT OF MANORIAL INCIDENTS.

THE FIRST SCHEDULE REFERRED TO IN THE ABOVE AGREEMENT.

[*Description of the land affected by the manorial incidents.*]

Note.—This description will be taken from the Court Rolls unless a new description is agreed to. In default of agreement the party requiring a plan or new description must bear any additional costs incident thereon.

THE SECOND SCHEDULE REFERRED TO IN THE ABOVE AGREEMENT.

First Part.

[*Particulars of documents relating to the said manor and retained by the said* ——.]

Second Part.

[*Particulars of documents relating to the said land and retained by the said* ——.]

IV. RECEIPTS *for* RENTS, &c. *and* GROSS SUM *to be* ENDORSED *on the* COMPENSATION AGREEMENT.

The Manor of —— in the County of ——.

1. The within-named lord of the above-mentioned manor hereby acknowledges that all rents, fines, reliefs, heriots and fees payable in respect of the land referred to in the within agreement have been duly discharged.

2. The said lord [*or,* the within-named —— and —— (as trustees for the purposes of the Settled Land Acts of the vesting deed affecting the said manor, *or other the proper description of the persons who would be entitled to give a receipt for the proceeds of the sale if the manorial incidents were sold*)] hereby acknowledge[s] the receipt of the compensation money by the within-written agreement agreed to be paid, and all interest (if any) due thereon.

Dated this —— day of ——, 19—.

Note.—Paragraph 2 will only be used when the compensation is paid in a single gross sum. If a rentcharge is created, separate receipts must be given as and when each instalment is paid.

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